

**PUBLIC CHAPTER NO. 602****SENATE BILL NO. 2223****By Kyle, Marrero****Substituted for: House Bill No. 2281****By Odom**

AN ACT to amend Tennessee Code Annotated, Title 67 and Title 6, Chapter 51; Chapter 357 of the Public Acts of 2003, as amended by Chapter 959 of the Public Acts of 2004 and Chapter 311 of the Public Acts of 2005; Chapter 959 of the Public Acts of 2004, as amended by Chapter 311 of the Public Acts of 2005; and Chapters 311 and 499 of the Public Acts of 2005, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2009(4), is amended by adding the following as subdivision (I):

(I)(i) If the taxpayer makes a required capital investment in excess of one billion dollars (\$1,000,000,000) during the investment period, the credit allowed in subdivision (4)(A) shall be equal to ten percent (10%) of the purchase price of industrial machinery located in Tennessee and purchased in the process of making the required capital investment. Such credit shall be subject to the provisions of subdivisions (4)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (4)(I) shall be entitled to the credit for the items listed in subdivision (4)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(c).

(ii) If the taxpayer makes a required capital investment in excess of five hundred million dollars (\$500,000,000) during the investment period, the credit allowed in subdivision (4)(A) shall be equal to seven percent (7%) of the purchase price of industrial machinery located in Tennessee and purchased in the process of making the required capital investment. Such credit shall be subject to the provisions of subdivisions (4)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (4)(I) shall be entitled to the credit for the items listed in subdivision (4)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(c).

(iii) If the taxpayer makes a required capital investment in excess of two hundred fifty million dollars (\$250,000,000) during the investment period, the credit allowed in subdivision (4)(A) shall be equal to five percent (5%) of the purchase price of industrial machinery located in Tennessee and purchased in the process of making the required capital

investment. Such credit shall be subject to the provisions of subdivisions (4)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (4)(I) shall be entitled to the credit for the items listed in subdivision (4)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(c).

(iv) If the taxpayer makes a capital investment in excess of one hundred million dollars (\$100,000,000) during the investment period, the credit allowed in subdivision (4)(A) shall be equal to three percent (3%) of the purchase price of industrial machinery located in Tennessee and purchased in the process of making the required capital investment. Such credit shall be subject to the provisions of subdivisions (4)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (4)(I) shall be entitled to the credit for the items listed in subdivision (4)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(c).

(v) For purposes of this subdivision (4)(I), "required capital investment" means an increase of a business investment in real or tangible personal property owned in Tennessee and/or leased property in Tennessee valued according to § 67-4-2108(a) or (b). A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction.

(vi) For purposes of this subdivision (4)(I), "investment period" means a period not to exceed three (3) years from the filing of the business plan related to the required capital investment, during which the required capital investment must be made. The three-year period for making the required capital investment may be extended by the Commissioner of Economic and Community Development for a reasonable period, not to exceed two (2) years, for good cause shown. For purposes of this subdivision (4)(I), "good cause" includes, but is not limited to, a determination by the Commissioner of Economic and Community Development that the capital investment is a result of the credit provided in this subdivision (4)(I).

(vii) The taxpayer shall file a business plan with the Commissioner of Revenue in order to qualify for the credit provided in this subdivision (4)(I). The business plan shall be filed on or before the last day of the first fiscal year in which the investment is made and shall describe the investment. The Commissioner of Revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the findings contained within the business plan and to determine that the taxpayer has complied with all statutory requirements so as to be entitled to the credit provided in this subdivision (4)(I).

(viii) The credit provided in this subdivision (4)(l) shall begin to apply in the first year of the investment period; however, if the required capital investment is not met during the investment period, the taxpayer shall be subject to an assessment equal to the amount of any credit taken under this subdivision (4)(l) for which the taxpayer failed to qualify, plus interest.

SECTION 2. Tennessee Code Annotated, Section 67-4-2109(h), is amended by deleting the language in subdivisions (1), (2), and (3) and substituting instead the following:

(1) For purposes of this subsection (h), "headquarters facility", "headquarters staff employees", "investment period", "new full-time employee job", "qualified headquarters facility", and "qualified headquarters facility relocation expenses" shall have the same meaning as defined in § 67-6-224.

(2) In addition to the job tax credit provided in subsection (c), there is allowed a credit against a taxpayer's franchise and excise tax liability equal to any qualified headquarters facility relocation expenses incurred by the taxpayer during the investment period for establishing a qualified headquarters facility; provided, that the taxpayer meets one of the following criteria:

(A) The taxpayer creates at least one hundred (100) but less than two hundred fifty (250) net new full-time employee jobs that pay at least one hundred fifty percent (150%) of Tennessee's average occupational wage;

(B) The taxpayer creates at least two hundred fifty (250) but less than five hundred (500) net new full-time employee jobs that pay at least one hundred fifty percent (150%) of Tennessee's average occupational wage;

(C) The taxpayer creates at least five hundred (500) but less than seven hundred fifty (750) net new full-time employee jobs that pay at least one hundred fifty percent (150%) of Tennessee's average occupational wage;

(D) The taxpayer creates at least seven hundred fifty (750) net new full-time employee jobs that pay at least one hundred fifty percent (150%) of Tennessee's average occupational wage; or

(E) The taxpayer qualifies for the job tax credit provided in subdivision (c)(2)(H) in connection with a required capital investment in excess of one billion dollars (\$1,000,000,000).

(3) Notwithstanding any provision to the contrary, the total credit allowed to a taxpayer under this subdivision (h) shall not exceed the appropriate dollar amount listed in one of the subdivisions below multiplied by the number of headquarters staff employee positions relocated by the taxpayer to the qualified headquarters facility during the investment period:

(A) For a taxpayer meeting the requirements in subdivision (h)(2)(A), ten thousand dollars (\$10,000);

(B) For a taxpayer meeting the requirements in subdivision (h)(2)(B), twenty thousand dollars (\$20,000);

(C) For a taxpayer meeting the requirements in subdivision (h)(2)(C), thirty thousand dollars (\$30,000);

(D) For a taxpayer meeting the requirements in subdivision (h)(2)(D), forty thousand dollars (\$40,000); and

(E) For a taxpayer meeting the requirement in subdivision (h)(2)(E), fifty thousand dollars (\$50,000).

SECTION 3. Tennessee Code Annotated, Section 67-6-224(b)(7)(A), is amended by deleting the language in subdivision (ii) and substituting instead the following:

(ii) A minimum investment by the taxpayer and the lessor to the taxpayer of ten million dollars (\$10,000,000) in a building or buildings, either newly constructed, expanded, or remodeled, along with the creation of not fewer than one hundred (100) net new full-time employee jobs created during the investment period that pay at least one hundred fifty percent (150%) of Tennessee's average occupational wage, as defined in § 67-4-2004, for the month of January of the year in which such full-time employee jobs are created;

SECTION 4. Tennessee Code Annotated, Section 67-6-232, is amended by deleting the language "an emerging industry" each place that it appears in the section and substituting instead the language "an emerging industry or a major cultural attraction" in each place.

SECTION 5. Tennessee Code Annotated, Section 67-6-232(b), is amended by adding the following as a new, appropriately designated subdivision:

( ) "Major cultural attraction" means a historical site that has been in existence for at least twenty-five (25) years that attracts at least five hundred thousand (500,000) tourists per year and significantly contributes to the Tennessee tourism industry as determined by the Commissioner of Revenue and the Commissioner of Economic and Community Development, but shall not include any theme park or trade show facility;

SECTION 6. Tennessee Code Annotated, Section 67-6-232(b)(4), is amended by deleting the language "with average wages or salaries equal to or greater than one hundred and seventy-five percent (175%) of the average wage in the county, or the metropolitan statistical area in which the qualified facility is located, whichever is higher, as reported in the Monthly Labor Report published by the Department of Labor and Workforce Development" and substituting instead the language "that pay at least one hundred fifty percent (150%) of Tennessee's average occupational wage, as defined in § 67-4-2004,".

SECTION 7. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new, appropriately designated subdivision:

( ) "Average occupational wage" means the average wage for all industries as reported by the Tennessee Department of Labor and Workforce Development in the most recent annual quarterly census of employment and wages super sector data for Tennessee, aggregate of all ownerships;

SECTION 8. Tennessee Code Annotated, Section 67-4-2109(c)(1), is amended by deleting subdivision (A) in its entirety and is further amended by deleting the language "average industrial wage" from subdivision (D) and substituting instead the language "average occupational wage".

SECTION 9. Tennessee Code Annotated, Section 67-4-2109(c)(2)(H), is amended by deleting the language "average industrial wage for all manufacturing sectors as reported in the Monthly Labor Report published by the Department of Labor and Workforce Development" each place that it appears and substituting instead the language "average occupational wage" in each place.

SECTION 10. Tennessee Code Annotated, Section 67-4-2109(c)(2)(I), is amended by deleting the language "Tennessee's average industrial wage" each place that it appears and substituting instead the language "Tennessee's average occupational wage" in each place, and is further amended by inserting the following as new subdivision (iv) and redesignating current subdivision (iv) as subdivision (v):

(iv) If the business enterprise involves a required capital investment of ten million dollars (\$10,000,000) and the creation of at least one hundred (100) net new full-time employee jobs as defined in § 67-6-224(8) that pay at least one hundred fifty percent (150%) of Tennessee's average occupational wage for the month of January of the year in which such jobs are created, the credit allowed in this subdivision (c)(2) shall be five thousand dollars (\$5,000) for each net new full-time employee job as defined in § 67-6-224(8) created during the investment period. In addition to the job tax credits allowed to the taxpayer under this subsection (c) during the investment period, an additional tax credit shall be allowed on an annual basis to offset the taxpayer's franchise and excise tax liability under this chapter for a period of three (3) years beginning with the first tax year after the investment and job threshold criteria are met. The additional credit shall equal five thousand dollars (\$5,000) for each net new full-time employee job as defined in § 67-6-224(8) created during the investment period; provided, that the jobs remain filled by employees, at wages equal to or greater than one hundred fifty percent (150%) of Tennessee's average occupational wage for the month of January of the year in which the credit is being taken. This annual credit may be used to offset up to one hundred percent (100%) of the taxpayer's franchise and excise tax liability for that year. Any unused annual credit, however, shall not be carried forward beyond the year in which the credit originated, notwithstanding subdivision (c)(2)(F) to the contrary. For purposes of this subdivision (c)(2)(I), a capital investment shall be deemed to have been made as of the date of payment or the date the business enterprise enters into a legally binding commitment or contract for purchase or construction.

SECTION 11. Tennessee Code Annotated, Section 67-4-2109(k)(1), is amended by deleting the language in subdivision (A) and by substituting instead the following:

(A) "Qualified expenses" means those expenses incurred in Tennessee prior to July 1, 2012 that are necessary for the production of a movie or episodic television program in Tennessee; provided, however, that such expenses shall not qualify under this subdivision (k)(1)(A) unless both the Commissioner of Revenue and the Commissioner of Economic and Community Development determine, in their sole discretion, that the production and the allowance of the credit are in the best interests of this state. For purposes of this subdivision (k)(1)(A), "best interests of this state" means a determination by the Commissioner of Revenue and the Commissioner of Economic and Community Development that such production is a result of the credit provided in this subsection (k) and that such production is not found to be obscene as defined in § 39-17-901.

SECTION 12. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new, appropriately designated subsection:

( ) (1) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax Law, compiled in this part, and the Excise Tax Law, compiled in Part 20 of this chapter, in an amount equal to ten percent (10%) of the financial institution's contribution to the Tennessee Rural Opportunity Fund. The credit provided in this subsection shall be allowed each year for a period of ten (10) years, beginning with the tax year in which the contribution is made. Any unused credit allowed under this subsection shall not be carried forward beyond the tax year in which the credit originated.

(2) For purposes of this subsection, the loaning of funds by the taxpayer to the Tennessee Rural Opportunity Fund shall constitute a contribution by the taxpayer to the Tennessee Rural Opportunity Fund. If, however, at the close of the tenth year of the period during which the credit is allowed, the taxpayer or its assignee has received repayment, or retains any right to repayment, of all or any portion of the amount contributed to the Tennessee Rural Opportunity Fund or any interest accrued thereon, the department shall be entitled to recapture the credit allowed by increasing the franchise and/or excise tax liability of the taxpayer by the credit recapture amount for the first tax year following the ten-year period during which the credit is allowed. The credit recapture amount shall be equal to the total amount of credit allowed, plus interest at the rate determined under § 67-1-801 from the date such credit was offset against the taxpayer's franchise and/or excise tax liability.

SECTION 13. Tennessee Code Annotated, Section 67-4-2013(a), is amended by adding the following as a new, appropriately designated subdivision:

( ) BARGES. The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The revenue from the transportation of cargo loaded in this state as compared with the entire revenue from the transportation of cargo loaded in and outside the state; and

(B) The ratio of the total miles operated in the state to the total miles operated in and outside the state. Miles operated in Tennessee shall be fifty percent (50%) of the miles operated on the Mississippi River adjacent to the Tennessee shoreline, plus all miles operated on inland waterways within Tennessee. "Mile operated" means one (1) mile of movement of each barge.

SECTION 14. Tennessee Code Annotated, Section 67-4-2113, is amended by adding the following as a new, appropriately designated subdivision:

( ) BARGES. The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The revenue from the transportation of cargo loaded in this state as compared with the entire revenue from the transportation of cargo loaded in and outside the state; and

(B) The ratio of the total miles operated in the state to the total miles operated in and outside the state. Miles operated in Tennessee shall be fifty percent (50%) of the miles operated on the Mississippi River adjacent to the Tennessee shoreline, plus all miles operated on inland waterways within Tennessee. "Mile operated" means one (1) mile of movement of each barge.

SECTION 15. Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by adding the following as a new, appropriately designated subdivision:

( ) In the case of a corporation that has elected S corporation status under 26 U.S.C. §§ 1361-1363, any gain that is not included in net earnings or loss and that is attributable to an election under 26 U.S.C. § 338(h)(10);

SECTION 16. Tennessee Code Annotated, Section 67-4-2006(b)(2), is amended by adding the following as a new, appropriately designated subdivision:

( ) In the case of a corporation that has elected S corporation status under 26 U.S.C. §§ 1361-1363, any loss that is not included in net earnings or loss and that is attributable to an election under 26 U.S.C. § 338(h)(10);

SECTION 17. Tennessee Code Annotated, Section 67-4-2006(b)(2)(C), is amended by deleting the current language in its entirety and substituting instead the following:

(b)(2)(C) A portion of the gain or loss of the sale or other disposition of property having a higher basis for Tennessee excise tax purposes than federal income tax purposes measured by the difference in the Tennessee basis and the federal basis, provided, however, that there shall be no adjustment under this subdivision (b)(2)(C) as a result of the taxpayer not having been subject to the tax imposed by this part during any portion of the period during which the taxpayer took depreciation expense on the property for federal income tax purposes;

SECTION 18. Tennessee Code Annotated, Section 67-4-2006(c)(1), is amended by deleting the language "67-4-2004(34)" and substituting instead the language "67-4-2004".

SECTION 19. Tennessee Code Annotated, Section 67-4-2007(e)(2), is amended by deleting the subdivision in its entirety and substituting instead the following:

(e)(2)(A) Financial institutions subject to tax in this state, that are members of a unitary group, shall file a combined return and pay tax based on the apportioned combined net earnings of the entire unitary group, as defined in § 67-4-2006(a)(3). The members of the group shall designate one (1) member that is subject to tax in this state to file the combined return. Except as provided in subdivision (e)(2)(B), each member subject to tax in this state shall be jointly and severally liable for the tax imposed by this part with regard to the unitary business.

(B) Joint and several liability for the tax imposed by this part with regard to the unitary business shall not apply to any member that is a limited liability company, limited liability partnership, or limited partnership and meets the criteria set forth either in subdivision (i) or (ii) below:

(i)(a) The member was formed and operated for the primary purpose of acquiring, from one or more of its direct or indirect owners, notes, accounts receivable, installment sale contracts, or similar evidences of indebtedness; and

(b) The member has pledged substantially all of its assets as security, directly or indirectly, for third party borrowings or securitized indebtedness acquired by third parties; or

(ii) Substantially all of the member's assets consist of assets described in subdivision (e)(2)(B)(i)(a), cash and cash equivalents, third party debt securities, or equity interests in entities satisfying the requirements of subdivision (e)(2)(B)(i) above.

(C) For the purposes of subdivision (e)(2)(B) above, the following provisions shall apply:

(i) The requirements of subdivision (e)(2)(B)(i)(a) above shall be satisfied by the presence of language in the entity's organizational or other governing documents expressly stating that the purpose of the entity is to acquire, own, manage, protect, conserve and sell or otherwise dispose of assets described in subdivision (e)(2)(B)(i)(a), cash and cash equivalents, and third party debt securities; to enter into and perform its obligations under its organizational documents, any documents



relating to the acquisition of such assets or any third party borrowing or securitized indebtedness to which the entity is a party; and to engage in activities related or incidental to the foregoing and necessary or appropriate therefor.

(ii) The term "substantially all" as set forth in subdivision (e)(2)(B) above means at least two-thirds (66.67%) of the entity's assets as determined by fair market value.

SECTION 20. Tennessee Code Annotated, Section 67-4-2114(c), is amended by deleting the subsection in its entirety and substituting instead the following:

(c)(1) Financial institutions subject to tax in this state that are members of a unitary group, as defined in § 67-6-2004, shall file a combined return, and pay the tax imposed by this part, after apportionment, based on all operations of the unitary business. This report shall include the information set out in subsections (a) and (b), for every member of the unitary group, even if some of the members would not otherwise be subject to taxation under this part. Dividends, receipts and expenses resulting from transactions between members of a unitary group shall be excluded from the return, for purposes of apportionment under § 67-4-2118. The members shall designate one (1) member that would otherwise be subject to tax on a separate entity basis to file the combined return. Except as provided in subdivision (c)(2), each member subject to tax in this state shall be jointly and severally liable for the tax imposed by this part with regard to the unitary business.

(2) Joint and several liability for the tax imposed by this part with regard to the unitary business shall not apply to any member that is a limited liability company, limited liability partnership, or limited partnership and meets the criteria set forth either in subdivision (A) or (B) below:

(A)(i) The member was formed and operated for the primary purpose of acquiring, from one or more of its direct or indirect owners, notes, accounts receivable, installment sale contracts, or similar evidences of indebtedness; and

(ii) The member has pledged substantially all of its assets as security, directly or indirectly, for third party borrowings or securitized indebtedness acquired by third parties; or

(B) Substantially all of whose assets consist of assets described in subdivision (c)(2)(A)(i), cash and cash equivalents, third party debt securities, or equity interests in entities satisfying the requirements of subdivision (c)(2)(A) above.

(3) For the purposes of subdivision (c)(2) above, the following provisions shall apply:

(A) The requirements of subdivision (c)(2)(A)(i) above shall be satisfied by the presence of language in the entity's organizational or other governing documents expressly stating that the purpose of the entity is to acquire, own, manage, protect, conserve and sell or otherwise dispose of assets described in subdivision (c)(2)(A)(i), cash and cash equivalents, and third party debt securities; to enter into and perform its obligations under its organizational documents, any documents relating to the acquisition of such assets or any third party borrowing or securitized indebtedness to which the entity is a party; and to engage in activities related or incidental to the foregoing and necessary or appropriate therefor.

(B) The term "substantially all" as set forth in subdivision (c)(2) above means at least two-thirds (66.67%) of the entity's assets as determined by fair market value.

SECTION 21. Tennessee Code Annotated, Section 67-4-2008(a)(12)(A), is amended by deleting the language "or limited partnership" and by substituting instead the language "limited partnership, or business trust".

SECTION 22. Tennessee Code Annotated, Section 67-4-310, is amended by deleting the language "former § 67-4-506(a) [repealed]" each place in which it appears and by substituting instead the language "§ 67-4-506".

SECTION 23. Tennessee Code Annotated, Section 67-4-1603, is amended by deleting the language "one dollar (\$1.00)" and by substituting instead the language "one dollar and thirty-five cents (\$1.35)".

SECTION 24. Tennessee Code Annotated, Section 67-4-1605, is amended by deleting subsection (b) in its entirety.

SECTION 25. Tennessee Code Annotated, Section 67-4-1606, is amended by deleting subdivision (b)(2) in its entirety.

SECTION 26. Tennessee Code Annotated, Section 67-4-1606, is amended by deleting the language in subsection (d) and substituting instead the following:

(d) Failure to file the return and/or pay the fee due under this part prior to the date provided by this section shall cause the fee to become subject to interest as provided in § 67-1-801. When any dealer fails to timely file the return required by this section or fails to timely pay any amount shown to be due on the return, the penalty provided in § 67-1-804(a) shall apply. Notwithstanding § 67-1-804(b) or any other provision to the contrary, when any dealer fails to report and pay the total amount of the fee determined to be due by the commissioner, there shall be imposed a penalty in the amount of fifty percent (50%) of the unpaid amount. If such failure is determined by the commissioner to be due to fraud, the penalty provided in § 67-1-804(c) shall apply. The penalty imposed by this subsection shall be subject to the waiver provisions provided in § 67-1-803.

SECTION 27. Tennessee Code Annotated, Section 67-4-1610, is amended by deleting the language "ten percent (10%) of the amount due on the report" and substituting instead the language "ten cents (10¢) per tire reported on the return".

SECTION 28. Tennessee Code Annotated, Section 67-4-2807, is amended by deleting the current language in its entirety and substituting instead the following:

Notwithstanding any other provision of law, an assessment against a dealer who possesses an unauthorized substance to which a stamp has not been affixed as required by this part shall be made as provided in this section. The commissioner shall assess tax, applicable penalty, and interest based on any information brought to the attention of the commissioner, or the commissioner's duly authorized assistants, that a person is liable for unpaid tax pursuant to this part. The tax shall be assessed in the same manner as any other tax assessment, except when the provisions of this part specify otherwise. The commissioner shall notify the dealer in writing of the amount of the tax, penalty, and interest due. The notice of assessment shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest upon receipt of the notice of assessment, the commissioner shall collect the assessment, including penalty and interest, pursuant to the procedures set forth in Chapter 1, Part 14, of this title. The dealer may seek review of the assessment as provided in Chapter 1, Part 18, of this title. The provisions of § 67-1-1802 are applicable to the tax levied by this part, except that a claim for refund shall be filed within six (6) months of the date of payment of the tax.

SECTION 29. Tennessee Code Annotated, Section 67-4-2808, is amended by deleting the current language in its entirety and substituting instead the following:

Notwithstanding any other provision of law, information obtained pursuant to this part is confidential and may not be used in a criminal prosecution other than a prosecution for a violation of this part. Stamps issued pursuant to this part may not be used in a criminal prosecution other than a prosecution for a violation of this part. This section does not prohibit the commissioner from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.

SECTION 30. Tennessee Code Annotated, Section 67-1-703(b), is amended by deleting the language "five thousand dollars (\$5,000) or more" and substituting instead the language "two thousand five hundred dollars (\$2,500) or more".

SECTION 31. Tennessee Code Annotated, Section 67-1-1802, is amended by deleting the language in subdivision (b)(1) and substituting instead the following:

(b)(1) All claims for refund filed pursuant to this section shall be finally determined within six (6) months following receipt of the claim. If the claim for refund is denied, the commissioner shall promptly notify the claimant of the denial and the claimant's right to file a suit for refund in the appropriate chancery court of this state within one (1) year from the date that the claim for refund was filed with the commissioner.

SECTION 32. Tennessee Code Annotated, Section 67-1-1802, is amended by deleting the language in subdivision (c)(1) and substituting instead the following:

(c)(1) A suit challenging the denial or deemed denial of a claim for refund must be filed in the appropriate chancery court of this state within one (1) year from the date that the claim for refund was filed with the commissioner. The chancery court shall conduct a de novo trial of the suit.

SECTION 33. Tennessee Code Annotated, Section 67-1-1802(c)(2), is amended by deleting the language "six (6) months" and by substituting instead the language "one (1) year".

SECTION 34. Tennessee Code Annotated, Section 67-1-1803, is amended by deleting the language in subsection (d) and by substituting instead the following:

(d) The court shall award to the prevailing party reasonable attorneys' fees and expenses of litigation up to twenty percent (20%) of the amount assessed or denied, including interest after payment. For purposes of this subsection (d), attorneys' fees shall not exceed fees calculated on the basis of reasonable hourly rates multiplied by a reasonable number of hours expended in the case and shall not be calculated by application of any premium, enhancement, or contingency.

SECTION 35. Tennessee Code Annotated, Section 67-6-102(20), is amended by adding the following as a new, appropriately designated subdivision:

( ) "Industrial machinery" shall also include any "computer", "computer network", "computer software", or "computer system", as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware such as printers, plotters, external disc drives, modems, and telephone units, including repair parts and any necessary repair or taxable installation labor therefor, when such equipment is used in the operation of a qualified data center.

SECTION 36. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following as two new, appropriately designated subdivisions:

( ) "Data center" means a building or buildings, either newly constructed, expanded, or remodeled, housing high-tech computer systems and related equipment.

( ) "Qualified data center" means a data center that has made a required capital investment in excess of two hundred fifty million dollars (\$250,000,000) during an investment period not to exceed three (3) years and that creates at least twenty-five (25) net new full-time employee jobs during the investment period paying at least one hundred fifty percent (150%) of Tennessee's average occupational wage as defined in § 67-4-2004. For purposes of this subdivision, "required capital investment" means an increase of a business investment in real or tangible personal property owned in Tennessee and/or leased property in Tennessee valued according to § 67-4-2108(a) or (b). A capital investment shall be deemed to have been made as of the date of payment or the date the

taxpayer enters into a legally binding commitment or contract for purchase or construction. For purposes of this subdivision, "full-time employee job" means a permanent, rather than seasonal or part-time, employment position for at least twelve (12) consecutive months to a person for at least thirty-seven and one-half (37 1/2) hours per week with minimum health care, as described in Title 56, Chapter 7, Part 22.

SECTION 37. Tennessee Code Annotated, Section 67-6-206, is amended by adding the following as a new, appropriately designated subsection:

( ) Tax at the rate of one and one-half percent (1.5%) shall be imposed with respect to electricity when sold to or used by a qualified data center.

SECTION 38. Tennessee Code Annotated, Section 67-6-303, is amended by deleting the section in its entirety and by substituting instead the following:

67-6-303. (a) There is exempt from the tax imposed by this chapter the sale or use of a motor vehicle that is registered in this state in accordance with the provisions of Title 55, if the vehicle is sold to any of the following:

(1) A member of a uniformed service in active military service of the United States, as defined in § 58-1-102, who is stationed in Tennessee or at a military reservation located partially within the boundary of Tennessee and that of another state under orders of the member's branch of service;

(2) A member of the Tennessee National Guard, or reserve member of a uniformed service of the United States, who is a participant in the Active Guard and reserve program (AGR) and is stationed in Tennessee or at a military reservation located partially within the boundary of Tennessee and that of another state under orders of the member's branch of service; or

(3) A member of the Tennessee National Guard, or a reserve member of a uniformed service of the United States, who has been called into active military service of the United States, as defined in § 58-1-102, and is stationed in a combat zone; provided that, with respect to an individual, the exemption provided in this subdivision (a)(3) shall apply from the effective date of official military orders assigning the individual to a combat zone and shall expire ninety (90) days after the effective date of official military orders releasing the individual from the combat zone.

(b) In order to qualify for the exemption provided in this section, the purchaser must provide to the seller, or to the county clerk when appropriate, a copy of the official orders related to the stationing of the purchaser and, if applicable, the purchaser's status as a member of the Active Guard and Reserve program. Such orders shall be retained in the seller's files and a copy shall accompany the application for registration.

(c) The exemption provided in this section shall apply only when the vehicle is titled and registered in the name of the qualifying individual, either alone or jointly with a spouse or lineal relative.

SECTION 39. Tennessee Code Annotated, Section 67-6-334(b), is amended by adding the following as a new, appropriately designated subdivision:

( ) The exemption provided in this section shall not apply to energy fuels sold over the counter at the location of the seller; provided, however, that propane sold over the counter in cylinders with a capacity of one hundred pounds (100 lbs.) or more directly to the consumer for residential use shall be exempt from the tax levied by this chapter.

SECTION 40. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following as a new section:

67-6-3\_\_\_. (a) A credit shall be granted in the manner provided in subsection (b) for the amount of the sales tax due on motor vehicle manufacturer's incentive payments included in the sales price of motor vehicles sold at retail.

(b) The credit shall apply such that sales tax is owed on the sales price of the motor vehicle less any otherwise taxable motor vehicle manufacturer's incentive payment associated with such sale.

(c) For purposes of this section the following definitions apply:

(1) "Motor vehicle manufacturer's incentive purchase program" means a program sponsored by a motor vehicle manufacturer pursuant to which an amount, whether paid in money, credit, or otherwise, is received by a retailer from a motor vehicle manufacturer based upon the unit price of motor vehicles sold at retail that requires the retailer to reduce the sales price of the product to the purchaser without the use of a manufacturer's coupon or redemption certificate; and

(2) "Motor vehicle manufacturer's incentive payment" means the amount due to the retailer pursuant to a motor vehicle manufacturer's incentive purchase program.

SECTION 41. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following as a new, appropriately numbered subdivision:

( ) Video programming services:

(A) "Video programming services" means programming provided by or generally considered comparable to programming provided by a television broadcast station and shall include cable television services sold by a provider authorized pursuant to Title 7, Chapter 59, wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) and video services provided through

wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology.

(B) "Video programming services" shall not include any of the following:

(i) Digital products transferred electronically, including, but not limited to, software, ringtones, and reading materials such as books, magazines, and newspapers;

(ii) Audio and video programming services provided by a commercial mobile service provider as defined in 47 U.S.C. § 322(d);

(iii) Audio and video programming services provided as part of, or incidental to, Internet access service, such as, but not limited to, video capable email, provided that such services are not generally considered comparable to programming provided by a television broadcast station; and

(iv) Direct-to-home satellite television programming services.

SECTION 42. Tennessee Code Annotated, Section 67-6-102(34)(E)(iv), is amended by deleting the language "cable television service provider authorized pursuant to Title 7, Chapter 59," and by substituting the language "video programming service provider".

SECTION 43. Tennessee Code Annotated, Section 67-6-103(f), is amended by deleting both instances of the language "cable television service provider authorized pursuant to Title 7, Chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service)" and by substituting in both instances the language "video programming service provider".

SECTION 44. Tennessee Code Annotated, Section 67-6-201(9), is amended by deleting the language "cable television service provider authorized pursuant to Title 7, Chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service)" and by substituting the language "video programming service provider" and is further amended by deleting the language "offered for public consumption".

SECTION 45. Tennessee Code Annotated, Section 67-6-226, is amended by deleting the language "cable television service provider authorized pursuant to Title 7, Chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service)" and by substituting the language "video programming service provider".

SECTION 46. Tennessee Code Annotated, Section 67-6-539(b), is amended by deleting the language "such as cable, wireless cable".

SECTION 47. Tennessee Code Annotated, Section 67-6-714, is amended by deleting the language "cable television service provider authorized pursuant to Title 7, Chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service)" and by substituting the language "video programming services provider".

SECTION 48. Tennessee Code Annotated, Section 67-6-103(a)(3)(F), is amended by adding the following language at the end of subdivision (i):

The provisions of this subdivision (a)(3)(F)(i) shall also apply in any county having a population of not less than twelve thousand three hundred sixty-nine (12,369) nor more than twelve thousand four hundred fifty (12,450) and in any county having a population of not less than seventeen thousand nine hundred (17,900) nor more than eighteen thousand (18,000) according to the 2000 federal census or any subsequent federal census, and that border the Tennessee River;

and is further amended by deleting the language in subdivision (ii) in its entirety and substituting instead the following:

(ii)(a) Subject to the provisions of subdivision (a)(3)(F)(iv), a county, or municipality within a county, described in subdivision (a)(3)(F)(i) may elect Tennessee River Resort District status by adopting a resolution or ordinance approved by a two-thirds (2/3) vote of the legislative body of the jurisdiction.

(b) A county originally eligible to elect such status under Acts 2005, ch. 212, and initially electing such status after August 1, 2007, may elect such status for purposes of this subdivision (a)(3)(F) only and not for the purposes of Title 57, Chapter 4, Part 1, by including the following language in the electing resolution:

Notwithstanding the provisions of Tennessee Code Annotated, §§ 57-4-101(a)(19) and 57-4-102(33), to the contrary, \_\_\_\_\_ County shall not be considered a Tennessee River Resort District for purposes of Tennessee Code Annotated, Title 57, Chapter 4, Part 1.

In order for such election to be effective, all eligible cities within such county must elect Tennessee River Resort District status before the county makes such election. Municipalities having a population of not less than two thousand six hundred (2,600) nor more than two thousand seven hundred fifty (2,750) according to the 2000 federal census or any subsequent federal census making such election as provided in the preceding sentence shall not receive less in state shared taxes under this subdivision (a)(3) than the municipality would otherwise receive had it not made the election.

(c) The approval or nonapproval of a resolution or ordinance adopted pursuant to the provisions of this subdivision (a)(3)(F)(ii) shall be proclaimed by the presiding officer of the jurisdiction. Within thirty (30)



days of adopting such resolution or ordinance, the presiding officer of the jurisdiction shall send a certified copy of the ordinance or resolution to the secretary of state and the Commissioner of Revenue;

and is further amended by adding the following new subdivision:

(vi) Notwithstanding any provision of this subdivision (a)(3)(F) to the contrary, the election provided in this subdivision (a)(3)(F) shall only be available to eligible counties and municipalities that make the election prior to July 1, 2008.

SECTION 49. Chapter 924, § 19, of the Public Acts of 2004, is amended by deleting the language "shall expire on July 1, 2008" and by substituting instead the language "shall expire on July 1, 2010".

SECTION 50. Tennessee Code Annotated, Section 67-1-508, is amended by deleting the words "from the state" wherever they appear in subsection (c), and by deleting subdivision (c)(1) and substituting instead the following:

(c)(1) Out of funds available to the state board of equalization or division of property assessments, the state board may provide grants to counties to fund incentive increases of compensation for those assessors and their deputies who successfully complete certain courses of study and field training, and attain certain levels of increased competence and technical skills as prescribed and provided by the state board of equalization. Grants made pursuant to this subsection shall be used only as a cash salary bonus supplement to the assessor or deputy, and shall not be used to supplant existing salaries or other incentives or as substitutes for normal salary increases periodically due to assessors or their deputies.

SECTION 51. Chapter 357 of the Public Acts of 2003, as amended by Chapter 959 of the Public Acts of 2004 and Chapter 311 of the Public Acts of 2005, is hereby repealed in its entirety.

SECTION 52. Chapter 959 of the Public Acts of 2004, Sections 1 through 57, Sections 59 through 67, and Section 69, as amended by Chapter 311 of the Public Acts of 2005, are hereby repealed in their entirety.

SECTION 53. Chapter 499 of the Public Acts of 2005, Section 66 and Sections 68 through 74, are hereby repealed in their entirety.

SECTION 54. Tennessee Code Annotated, Section 67-1-110(c), is amended by adding the following as a new subdivision (6) and by renumbering the remaining subdivisions accordingly:

(6) Know the department's policies with respect to use and retention of personally identifiable information;

SECTION 55. Tennessee Code Annotated, Title 67, Chapter 1, Part 17, is amended by adding the following as a new section:

67-1-1712. (a) A certified service provider and the department shall comply with the privacy policy of the Streamlined Sales and Use Tax Agreement, and such policy is enforceable by the attorney general.

(b) Returns and tax information of a Model 1 seller may be disclosed to the seller's certified service provider.

SECTION 56. Tennessee Code Annotated, Section 67-1-1802, is amended by adding the following new subsection:

(d) The provisions of this section are specifically made applicable to a refund arising from the application of § 67-6-507(e)(5). If a certified service provider, as defined in § 67-6-102, has assumed sales and use tax return filing responsibilities of the seller, such provider shall have the right to claim, on behalf of the seller, any bad debt allowance or refund available to the seller under the provisions of § 67-6-507.

SECTION 57. Tennessee Code Annotated, Section 67-6-102(12), is amended by deleting the following language:

"Dealer" means every person, as used in this chapter, who:

and by substituting instead the following language:

"Dealer" means every person, as used in this chapter (including Model 1, Model 2, and Model 3 sellers, where the context requires), who:

SECTION 58. Tennessee Code Annotated, Section 67-6-102, is amended by deleting subdivision (16) in its entirety.

SECTION 59. Tennessee Code Annotated, Section 67-6-102(20)(B), is amended by deleting the language "the cost of which, for any single article, exceeds one thousand dollars (\$1,000)," and is further amended by adding at the end of the subdivision the following:

For the purposes of this subdivision, "remanufacturing" means making new or different products with new or different functions from the scrap materials used to make them;

SECTION 60. Tennessee Code Annotated, Section 67-6-102(25), is amended by deleting the current language in its entirety and by substituting instead the following:

(25) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend;

(A) Lease or rental does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision (25), an operator must do more than maintain, inspect, or set-up the tangible personal property.

(B) Lease or rental does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1);

(C) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, or Title 47, Chapter 2A, or other provisions of federal, state or local law;

(D) This definition shall be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals;

SECTION 61. Tennessee Code Annotated, Section 67-6-102(27), is amended by deleting the current language in its entirety and by substituting the following:

(27) "Mobile telecommunications service" means the same as that term is defined in 4 U.S.C. § 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act);

SECTION 62. Tennessee Code Annotated, Section 67-6-102(34), is amended by deleting the current language in its entirety and by substituting instead the following:

(34) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

SECTION 63. Tennessee Code Annotated, Section 67-6-102(36), is amended by deleting subdivision (B) in its entirety and is further amended by adding the following new appropriately designated subdivisions:

( ) "Sale" includes charges for admission, dues or fees which constitute a sale under this section except tickets for admission sold to a Tennessee dealer for resale upon presentation of a resale certificate. Dealers registered with the State of Tennessee for sales tax purposes may purchase tickets for resale without payment of tax upon presentation to the vendor of a valid certificate of resale;

( ) "Sale" includes all such transactions as the commissioner, upon investigation, finds to be in lieu of sales;

( ) "Sale" includes a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

( ) "Sale" includes a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments;

SECTION 64. Tennessee Code Annotated, Section 67-6-102(37), is amended by deleting the current language in its entirety and substituting instead the following:

(37)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges; and

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;

(B) "Sales price" shall not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iv) Credit for any trade-in, as determined by § 67-6-510, that is separately stated on an invoice or similar billing document given to the purchaser;

(C) "Sales price" shall include consideration received by the seller from third parties, if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, where the coupon, certificate or documentation is authorized, distributed or granted by a third party, with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(b) The purchaser identifies itself to the seller as a member of a group or organization entitled to a price reduction or discount. A "preferred customer" card that is available to any patron does not constitute membership in such a group; or

(c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser, or on a coupon, certificate or other documentation presented by the purchaser;

SECTION 65. Tennessee Code Annotated, Section 67-6-102(42), is amended by deleting the current language in its entirety and substituting instead the following:

"Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. In the event this may not be known, service address means the origination point of the signal of the telecommunication service first identified by either the seller's

telecommunication system or in information received by the seller from its service provider, where the system used to transport such signal is not that of the seller. In the event that neither location of telecommunications equipment nor origination point of the signal are known, service address means the location of the customer's place of primary use.

SECTION 66. Tennessee Code Annotated, Section 67-6-102(45), is amended by deleting the current language in its entirety and substituting instead the following:

(45)(A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(B) "Tangible personal property" does not include signals broadcast over the airwaves;

SECTION 67. Tennessee Code Annotated, Section 67-6-102(46)(B)(ix), is amended by deleting the current language in its entirety and substituting instead the following:

(ix) Digital products delivered electronically, including, but not limited to, computer software, music, video, reading materials or ringtones;

SECTION 68. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following as new, appropriately designated subdivisions:

( ) "Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse; or operating farm irrigation systems; or operating motor vehicles or other logging equipment used exclusively, whether for hire or not, in cutting and harvesting trees; when such vehicles or equipment are not operated upon the public highways of this state;

( ) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume;

( ) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;

( ) "Certified automated system" means software certified under the Streamlined Sales and Use Tax Agreement (SSUTA) to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

( ) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

( ) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task;

( ) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

( ) (A) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges shall not include delivery for direct mail when such charges are separately stated on an invoice or similar billing document given to the purchaser. If the shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

(i) A percentage based on the total sales price of the taxable property compared to the sales prices of all property in the shipment; or

(ii) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

(B) The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property;

( ) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36;

( ) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

( ) "Direct pay permit" means special written permission granted to a taxpayer by the commissioner to make all purchases free of the sales or use tax and report all sales or use tax due directly to the department;

( ) "Direct pay permit holder" means a taxpayer who holds a direct pay permit;

( ) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than "food and food ingredients", "dietary supplements" or "alcoholic beverages":

(A) Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body;

( ) "Durable medical equipment" means equipment, including repair and replacement parts for same, but does not include "mobility enhancing equipment", which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body;



( ) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, tobacco, candy, dietary supplements, or prepared food;

( ) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of "over-the-counter-drugs";

( ) "Local tax jurisdiction" means a geographic area where the same local option tax, either county tax or a combination of county and municipal tax, applies;

( ) "Mobility enhancing equipment" means equipment including repair and replacement parts to same, but does not include "durable medical equipment", which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

( ) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax;

( ) "Model 3 seller" means a seller that has sales in at least five states that are members of the Streamlined Sales and Use Tax Agreement, has total annual sales revenue of at least five hundred million dollars (\$500,000,000), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system;

( ) "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The "over-the-counter-drug" label includes:

(A) A "Drug Facts" panel; or

(B) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation.

"Over-the-counter-drug" does not include grooming and hygiene products.

( ) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications service, "place of primary use" must be within the licensed service area of the home service provider;

( ) "Prepaid calling service" means the right to access exclusively "telecommunications services", which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

( ) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize "mobile wireless service" as well as other non-telecommunications services including the download of digital products "delivered electronically", content and "ancillary services", which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount;

( ) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(C) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

"Prepared food" in subdivision ( ) (B) does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code so as to prevent food borne illnesses;

( ) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state;

( ) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications

or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software"; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software";

( ) (A) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body to:

- (i) Artificially replace a missing portion of the body;
- (ii) Prevent or correct physical deformity or malfunction; or
- (iii) Support a weak or deformed portion of the body;

(B) "Prosthetic device" does not include:

- (i) Corrective eyeglasses; or
- (ii) Contact lenses;

( ) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price;

( ) "Resale" shall mean a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" shall mean the sale of such property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale must, however, be in strict compliance with rules and regulations promulgated by the commissioner;

( ) "Software" means computer software;

( ) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco;

SECTION 69. Tennessee Code Annotated, Section 67-6-103, is amended by deleting the language in subsection (c) and by substituting instead the following:

(c)(1) Notwithstanding any provision to the contrary, all revenue generated from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) and from the tax levied at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars (\$1,600) but less than or equal to three thousand two hundred dollars (\$3,200) on the sale or use of any single article of personal property pursuant to Acts 2002, ch. 856, § 4, shall be paid into the state general fund and allocated exclusively for general state purposes.

(2) Notwithstanding any provision to the contrary, all revenue generated from the one-half percent (0.5%) increase in the sales and use tax rate that became effective April 1, 1992, shall be deposited in the state general fund and earmarked for education purposes in kindergarten through grade twelve (K-12).

SECTION 70. Tennessee Code Annotated, Section 67-6-202, is amended by adding the following as a new, appropriately designated subsection:

( ) This section levies a tax on the sales price of tangible personal property obtained from any vending machine or device.

SECTION 71. Tennessee Code Annotated, Title 67, Chapter 6, is amended by substituting the words "purchase price" for the words "cost price" wherever they appear in such chapter, except in §§ 67-6-102 and 67-6-316.

SECTION 72. Tennessee Code Annotated, Section 67-6-204(a), is amended by deleting the language "gross proceeds" each place it appears and substituting instead the language "sales price".

SECTION 73. Tennessee Code Annotated, Section 67-6-204, is amended by deleting subsection (b) in its entirety.

SECTION 74. Tennessee Code Annotated, Section 67-6-205(a), is amended by deleting the language "of the gross charge for" and substituting instead the language "on the sales price of".

SECTION 75. Tennessee Code Annotated, Section 67-6-205, is amended by adding the following new subsection:

(c) The retail sale of the following services are taxable under this chapter:

(1) The sale, rental or charges for any rooms, lodgings, or accommodations furnished to persons by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to persons for a consideration. The tax does not apply, however, to rooms, lodgings, or accommodations supplied to the same person for a period of ninety (90) continuous days or more; charges for or the value of the use of any time-share estate or perpetual interest in a trust, partnership, nonprofit corporation or limited liability company that has as its substantial purpose the ownership and control of real property; or charges for or amounts paid as a standard fee for the service of facilitating the exchange of one (1) time-share interval for another or the service of making a reservation for a time-share interval via a reservation system;

(2) Charges for services rendered by persons operating or conducting a garage, parking lot or other place of business for the purpose of parking or storing motor vehicles. The tax does not apply, however, to charges for such services made by the state and its political subdivisions when providing on-street parking space for which charges

are collected, or when operating or conducting a garage or parking lot which is unattended and such charges are collected by parking meters;

(3) The furnishing, for a consideration, of intrastate, interstate or international telecommunication services;

(4) The performing, for a consideration, of any repair services with respect to any kind of tangible personal property;

(5) The laundering or dry cleaning of any kind of tangible personal property, excluding coin-operated laundry, dry cleaning or car wash facilities, where a charge is made therefor; provided, that the provisions of this subdivision (c)(5) shall not apply to the bathing of animals provided by a licensed veterinarian when rendered for a medical purpose in conjunction with the practice of veterinary medicine, as defined in § 63-12-103;

(6) The installing of tangible personal property which remains tangible personal property after installation where a charge is made for such installation, whether or not such installation is made as an incident to the sale thereof, and whether or not any tangible personal property is transferred in conjunction with such installation service;

(7) The enriching of uranium materials, compounds, or products, which is performed on a cost-plus basis or on a "toll enrichment fee" basis;

(8) The renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis. This subdivision (c)(8) does not apply to the renting or providing of space to a craft fair, antique mall, or book fair or gun show, if such gun show or book fair is sponsored by a not-for-profit corporation. This subdivision (c)(8) also does not apply to the renting or providing of space at a flea market or the renting or providing of space at conventions, trade shows, or expositions, if such conventions, trade shows, or expositions do not allow the general public to enter the exhibit area for the purpose of making sales or taking orders for sales; and

(9) The furnishing, for a consideration, of ancillary services.

SECTION 76. Tennessee Code Annotated, Section 67-6-206(b), is amended by deleting the language in subdivision (3) and substituting instead the following:

(3) Such substances shall be exempt entirely from the taxes imposed by this chapter whenever it may be established to the satisfaction of the commissioner, by separate metering or otherwise, that they are exclusively used directly in the manufacturing process, coming into direct contact with the article being fabricated or processed by the manufacturer, and being expended in the course of such contact. Whenever the commissioner determines that the use of

such substances by a manufacturer meets such test, the commissioner shall issue a certificate evidencing the entitlement of the manufacturer to the exemption. A copy of the certificate issued by the commissioner or a fully completed Streamlined Sales Tax Certificate of Exemption, which must include the manufacturer's exemption authorization number included on the certificate issued by the commissioner, shall be furnished by the manufacturer to the manufacturer's supplier of such exempt substances. The certificate may be revoked by the commissioner at any time upon a finding that the conditions precedent to the exemption no longer exists.

SECTION 77. Tennessee Code Annotated, Section 67-6-206(b)(5), is amended by adding at the end of subdivision (b)(5) the following language:

Such person shall furnish to that person's supplier of such substance a copy of the certificate or a fully completed Streamlined Sales Tax Certificate of Exemption, which must include the manufacturer's exemption authorization number included on the certificate issued by the commissioner, to evidence qualification for the exemption.

SECTION 78. Tennessee Code Annotated, Section 67-6-206(b)(6)(B), is amended by deleting from subdivision (b)(6)(B) the following sentence, "Such person shall provide a copy of the certificate to that person's supplier of such substances to evidence qualification for the reduced rate" and substituting instead the following language:

Such person shall furnish to that person's supplier of such substances a copy of the certificate or a fully completed Streamlined Sales Tax Certificate of Exemption, which must include the exemption authorization number included on the certificate issued by the commissioner, to evidence qualification for the reduced rate.

SECTION 79. Tennessee Code Annotated, Section 67-6-207, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) The sale at retail, lease, rental, use, consumption, distribution, repair, storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter when sold to a qualified farmer or nurseryman in accordance with subsection (b):

(1) Any appliance used directly and principally for the purpose of producing agricultural products, including nursery products, for sale and use or consumption off the premises, but excluding an automobile, truck, household appliances or property which becomes real property when erected or installed;

(2) Grain bins and attachments thereto;

(3) Aircraft designed and used for crop dusting, such as an agracat or other similar airplanes which are designed for crop dusting purposes;

(4) Equipment used exclusively for harvesting timber;

(5) Trailers used to transport livestock, as defined in § 44-18-101;

(6) Self-propelled fertilizer or chemical application equipment used to spread fertilizer or chemical on farms to aid in the production of food or fiber for human or animal consumption, notwithstanding the fact that such equipment may be mounted on a chassis with wheels, if such equipment is not designed for over-the-road use, but may be driven over-the-road from the source of supply to the farm, and tender beds and spreader beds, even if mounted on a truck chassis;

(7) Systems for poultry environment control, feeding and watering poultry and conveying eggs;

(8) Replacement parts or labor relative to the repair of the tangible personal property described in subdivisions (a)(1) through (a)(7);

(9) Gasoline or diesel fuel used for "agricultural purposes" as defined in § 67-6-102; except that pre-mixed engine fuel containing gasoline and oil, produced for use in two-cycle engines and not for use in the propulsion of an aircraft, vessel or any other vehicle, that is sold in containers of one gallon (1 gal.) or less, is not exempt from the tax imposed by this chapter. For purposes of this subsection (a), "diesel fuel" means any petroleum distillate with at least twelve (12) to sixteen (16) carbon atoms per molecule and which has a boiling point of between three hundred fifty degrees Fahrenheit (350 degrees F) and six hundred fifty degrees Fahrenheit (650 degrees F) or any petroleum distillate which is ordinarily and customarily sold and used as a source of fuel for diesel engines;

(10) Seeds, seedlings, plants grown from seed and liners (cuttings) which will produce food or fiber, including tobacco, for human or animal consumption;

(11) Fertilizer to be used to aid in the growth and development of seeds, seedlings or plants as defined in subdivision (a)(10);

(12) Pesticides which are sold for the purpose of aiding in the production of food or fiber, including tobacco, for human or animal consumption. As used in this section, "pesticide" means any substance or mixture of substances or chemicals intended for defoliating or desiccating plants or for preventing, destroying, repelling or mitigating any insects, rodents, fungi, bacteria or weeds, including, but not limited to, insecticides, fungicides, bactericides, herbicides, desiccants, defoliant, plant regulators and nematocides;

(13) Containers for farm products and plastic or canvas used in the care and raising of plants, seeds or seedlings, as defined in subdivision (a)(10), and plastic or canvas used in covering feed bins, silos

and other similar storage structures;

(14) Livestock and poultry feeds, drugs used for livestock and instruments used for the administration of such drugs;

(15) Any natural or artificial substance used in the reproduction of livestock, including semen or embryos;

(16) Adjuvants and surfactants solutions sold exclusively for the purpose of mixture with insecticides, pesticides, fungicides or herbicides or for use as a soil conditioner when such is intended to aid in the growth and development of food or fiber, including tobacco, for human or animal consumption;

(17) Agri-sawdust;

(18) Electricity, natural gas and liquefied gas, including, but not limited to, propane and butane used directly in the production of food or fiber for human or animal consumption or to aid in the growing of a horticultural product for sale; and

(19) Coal, wood, wood products or wood by-products, or fuel oil, which is used as energy fuel in the production of food or fiber for human or animal consumption or in production of nursery and greenhouse crops.

(b) For purposes of this section, "a qualified farmer or nurseryman" means a person who meets one or more of the following criteria:

(1) The person is the owner or lessee of agricultural land from which one thousand dollars (\$1,000) or more of agricultural products were produced or sold during the year, including payments from government sources;

(2) The person is in the business of providing for-hire custom agricultural services for the plowing, planting, harvesting, growing, raising or processing of agricultural products or for the maintenance of agricultural land;

(3) The person is the owner of land that qualifies for taxation under the provisions of the Agricultural Forest and Open Space Land Act of 1976, compiled in Chapter 5, Part 10 of this title;

(4) The person's federal income tax return contains one or more of the following:

(A) Business activity on IRS schedule F (Profit or Loss From Farming); and

(B) Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or schedule E (Supplemental Income and Loss); and



(5) The person otherwise establishes to the satisfaction of the commissioner that the person is actively engaged in the business of raising, harvesting or otherwise producing agricultural commodities as defined in § 67-6-301(c)(2).

(c) Persons seeking to become qualified farmers or nurserymen shall apply to the commissioner for authority to make purchases exempt from tax. This application shall require such information as the commissioner deems necessary. If the commissioner finds from such information that the applicant is entitled to be a qualified farmer or nurseryman, the commissioner shall issue a certificate granting such authority for a period of four (4) years or until the applicant is no longer operating within the scope of its original application. Any misrepresentation made on the application by the applicant will subject the applicant to any applicable tax, penalty and interest.

(d) Persons who have obtained authority from the commissioner to make purchases tax exempt as a qualified farmer or nurseryman shall provide their vendors with a copy of the certificate issued by the commissioner or a fully completed Streamlined Sales Tax Certificate of Exemption, which must include the exemption authorization number included on the certificate issued by the commissioner, to evidence qualification for the exemption.

(e) Persons making purchases exempt from tax under this section shall keep records to establish that the property qualifies for the exemption. The purchaser shall be liable for tax, penalty and interest for making non-qualifying purchases without payment of tax.

SECTION 80. Tennessee Code Annotated, Section 67-6-212(a), is amended by deleting the language "of the gross receipts or gross proceeds" and substituting instead the language "on the sales price".

SECTION 81. Tennessee Code Annotated, Section 67-6-218, is repealed in its entirety.

SECTION 82. Tennessee Code Annotated, Section 67-6-219, is amended by deleting subsections (b), (c), (d) and (e) in their entirety and substituting instead the following new appropriately designated subsections:

( ) Persons seeking to make purchases at the reduced rate provided herein shall apply to the commissioner for a certificate as provided in § 67-6-528. In order to obtain the reduced tax rate, a copy of the certificate provided for by this section or a fully completed Streamlined Sales Tax Certificate of Exemption must be given by the common carrier to each dealer from which it intends to make purchases at the reduced rate.

( ) If a common carrier purchases property at the reduced rate and such property is used inside the state or the common carrier fails to keep records as required by the commissioner to establish that property purchased at the reduced rate was not used in this state, but was removed from this state for use and consumption outside this state, then the common carrier shall be liable for tax at

the full rate provided by § 67-6-203, regardless of whether such carrier had previously obtained a certificate as provided by this section.

( ) This section does not apply to sales of food and food ingredients, alcoholic beverages, tobacco, candy, dietary supplements, prepared food or fuel.

SECTION 83. Tennessee Code Annotated, Section 67-6-228, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) Notwithstanding any provision of this part to the contrary, except as otherwise provided in subsection (b), the retail sale of food and food ingredients for human consumption shall be taxed at the rate of six percent (6%) of the sales price.

(b) The retail sale of food and food ingredients sold as prepared food, alcoholic beverages, candy, dietary supplements and tobacco shall be taxed at the rate of tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202.

SECTION 84. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following new section:

67-6-229. Notwithstanding the exemptions provided by §§ 67-6-322 and 67-6-329 for sales to schools, "retail sale" and "sale at retail" subject to tax include any sale of tangible personal property or taxable services to a public or private school, grades kindergarten through twelve (K-12), or school support group, where such property or services are intended for resale by the school or school support group. Resales of such tangible personal property or taxable services by such school or school support group shall not be subject to tax. If for any reason a vendor does not collect and remit tax to the department on the sale of these items to the school or school support group, then the school or school support group shall be liable for use tax based on the purchase price of the items. This section does not apply to sales of textbooks and workbooks. This section does not apply to food and food ingredients or prepared food, when sold pursuant to programs authorized by a federal, state or local government entity or by the school governing body, that provide meals for public or private school students in grades kindergarten through twelve (K-12).

SECTION 85. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following new section:

67-6-230. (a) Notwithstanding any other provision of law to the contrary, the sale of a prepaid calling service and prepaid wireless calling service shall be subject to the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 at the time of the sale or recharge of the calling card or authorization code. No additional tax imposed by this chapter shall be due when the telecommunication service is accessed or received by the user of the calling card or authorization code.

(b) Notwithstanding any other provision of law to the contrary, the sale of a warranty or service contract covering the repair or maintenance of tangible

personal property or computer software shall be subject to the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 at the time of the sale of the contract. No additional tax shall be due on any repairs to the extent they are covered by the contract.

SECTION 86. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following new section:

67-6-231. The sale or use of computer software, including prewritten computer software, shall be subject to the tax levied by this chapter, regardless of whether such software is delivered electronically, by use of tangible storage media, or otherwise.

SECTION 87. Tennessee Code Annotated, Section 67-6-301(c)(2), is amended by deleting the current language in its entirety and by substituting instead the following:

(2) "Agricultural commodity", for purposes of this section, means horticultural, poultry, and farm products; livestock and livestock products; and harvested trees.

SECTION 88. Tennessee Code Annotated, Section 67-6-312, is repealed in its entirety.

SECTION 89. Tennessee Code Annotated, Section 67-6-314, is amended by deleting the current language in its entirety and by substituting instead the following:

There is exempt from the sales or use tax imposed by this chapter:

- (1) Prosthetic devices for human use;
- (2) Durable medical equipment for home use dispensed pursuant to a prescription for human use;
- (3) Oxygen delivery equipment and disposable medical supplies necessary to administer or deliver medical oxygen for human use;
- (4) Kidney dialysis equipment for use in the treatment of humans;
- (5) Enteral feeding systems for use in the treatment of humans;
- (6) Mobility enhancing equipment dispensed pursuant to a prescription for human use;
- (7) Any syringe used to dispense insulin for human use;
- (8) Disposable medical supplies such as bags, tubing, needles and syringes dispensed by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a practitioner of the healing arts licensed by the state, which are used for the intravenous administration of any prescription drug and which come into direct contact with the prescription drug or medicine. This exemption

applies only to supplies to be used in the treatment of a patient outside of a hospital, skilled nursing facility or ambulatory surgical treatment center;

(9) Computer software designed for use in the treatment of individuals with a learning disability and having no residual value for any other purpose that is prescribed by a licensed practitioner of the healing arts for use in the treatment of an individual; and

(10) The sale or use of disposable, non-prosthetic ostomy products for use by humans who have had colostomies, ileostomies, or urostomies.

SECTION 90. Tennessee Code Annotated, Section 67-6-317, is repealed in its entirety.

SECTION 91. Tennessee Code Annotated, Section 67-6-318, is repealed in its entirety.

SECTION 92. Tennessee Code Annotated, Section 67-6-320, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) There is exempt from the tax imposed by this chapter any drug, including over-the-counter-drugs, for human use dispensed pursuant to a prescription. This exemption shall not apply to grooming and hygiene products.

(b) There is exempt from the tax imposed by this chapter the sale or use of:

(1) Insulin; and

(2) Medical oxygen for human use dispensed pursuant to a prescription.

SECTION 93. Tennessee Code Annotated, Section 67-6-329(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a) The sale at retail, the use, the consumption, the distribution and the storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter:

(1) "Gasoline" as defined by statute in Tennessee, upon which a privilege tax per gallon is paid, and not refunded; except that pre-mixed engine fuel containing gasoline and oil, produced for use in two-cycle engines and not for use in the propulsion of an aircraft, vessel or any other vehicle, that is sold in containers of one gallon (1 gal.) or less, is not exempt from the tax imposed by this chapter;

(2) Motor vehicle fuel now taxed per gallon by Chapter 3, Part 2 of this title;

(3) Textbooks and workbooks;

(4) All sales made to the State of Tennessee or any county or municipality within the state;

(5) Liquefied gas now taxed by Chapter 3, Part 11 of this title;

(6) Magazines and books which are distributed and sold to consumers by United States mail or common carrier, where the only activities of the seller or distributor in Tennessee are those activities having to do with the printing, storage, labeling and/or delivery to the United States mail or common carrier of such magazines or books, or the maintenance of raw materials with respect to such activities, notwithstanding that such seller or distributor maintains in Tennessee employees solely in connection with the production and quality control of such printing, storage, labeling and/or delivery, or in connection with news gathering and reporting;

(7) Parking privileges sold by colleges, universities, technical institutes or state technology centers to students at any such institutions;

(8) Materials used for the lining or protective coating of railroad tank cars and any charges made for the installation or repair of such linings or protective coatings;

(9) Chemicals and supplies used in air or water pollution control facilities for pollution control purposes;

(10) Periodicals printed entirely on newsprint or bond paper and regularly distributed twice monthly, or on a biweekly or more frequent basis, and advertising supplements or other printed matter distributed with such periodicals;

(11) The sale of United States and Tennessee flags sold by a nonprofit organization;

(12) Industrial materials and explosives for future processing, manufacture or conversion into articles of tangible personal property for resale where such industrial materials and explosives become a component part of the finished product or are used directly in fabricating, dislodging, sizing;

(13) Materials, containers, labels, sacks, bags or bottles used for packaging tangible personal property when such property is either sold therein directly to the consumer or when such use is incidental to the sale of such property for resale;

(14) Film, including negatives, used in the business of printing, or provided to a business of printing to obtain the services of such business; or typesetting used in the business of printing and materials necessary for such typesetting, or typesetting, or materials necessary for typesetting provided to a business of printing to obtain the services of such business;

(15) Home communication terminals, remote control devices, and other similar equipment purchased on or after January 1, 2000, by a video programming service provider and held for sale or lease to its subscribers;

(16) Utility poles, anchors, guys, and conduits;

(17) Aircraft used for and owned by a person providing flight training; and

(18) Prepared food, as defined in § 67-6-102, when sold pursuant to programs authorized by a federal, state or local government entity or by the school governing body, that provide meals for public or private school students in grades kindergarten through twelve (K-12). This provision shall not be interpreted to exempt a public or private school or school support group from paying sales or use taxes on the purchase price of prepared food or food and food ingredients, as defined by § 67-6-102, purchased for resale by the school or a school support group at fund raisers, sports events and the like pursuant to the provisions of § 67-6-229, or to exempt sales from any vending machine, including vending machines located on the premises of public or private schools, from the sales tax.

SECTION 94. Tennessee Code Annotated, Section 67-6-329, is amended by deleting subsection (b) in its entirety.

SECTION 95. Tennessee Code Annotated, Section 67-6-330(a), is amended by deleting the phrases "gross proceeds or receipts from", "gross proceeds derived from" and "gross proceeds or receipts derived from" each place that they appear and by substituting instead in each place the phrase "the sales price of".

SECTION 96. Tennessee Code Annotated, Section 67-6-337, is amended by deleting the current language in its entirety and by substituting instead the following:

There are exempt from the tax imposed by this chapter all sales for which the consideration given is food stamps, food coupons or for which an electronic debit card or other electronic benefits transfer system is used or that utilizes such other means as the Department of Human Services may approve, and which cards, systems or other means may be issued, authorized or used by the department or the federal government, their agents or contractors to assist persons, on a means-tested basis, to purchase eligible food and food ingredients, prepared food, candy and dietary supplements in accordance with the laws and regulations issued by the federal government pursuant to the Food Stamp Act of 1964, compiled in 7 U.S.C. § 2011, et seq., or the department pursuant to Title 71, Chapter 5, Part 3, or in accordance with any other current enabling legislation or subsequent enabling legislation or regulations authorizing issuance of food coupons, food stamps or the use of any electronics benefits transfer process, including, but not limited to, the use of any electronic debit card system or other such system as the department may approve. If any other consideration other than that provided for in the preceding sentence is used in any sale, that portion of such sale shall be fully taxable.

SECTION 97. Tennessee Code Annotated, Section 67-6-340, is amended by deleting subsection (c) in its entirety and is further amended by deleting subsection (b) and substituting instead the following:

(b) Persons seeking to make exempt purchases as provided in this section shall apply to the commissioner for a certificate as provided in § 67-6-529. In order to obtain the exemption, a copy of the certificate provided by this section or a fully completed Streamlined Sales Tax Certificate of Exemption must be given by the railroad to each dealer from which it intends to make exempt purchases.

SECTION 98. Tennessee Code Annotated, Section 67-6-351, is amended by deleting the current language in its entirety and substituting instead the following:

Veterinarians shall be considered the users and consumers of all drugs purchased by them for use or resale in the practice of veterinary medicine. All such drugs shall be subject to sales or use tax on the purchase price to the veterinarian; provided, however, that drugs used in the treatment of livestock and instruments used for the administration of drugs used in the treatment of livestock shall be exempt from tax. Veterinarians seeking to make exempt purchases of drugs, and instruments for the administration of such drugs, used in treatment of livestock or resold in the practice of veterinary medicine for treatment of livestock shall provide a fully completed Streamlined Sales Tax Certificate of Exemption to each dealer from which it intends to make such exempt purchases. Veterinarians shall be liable for tax on such drugs or instruments at the full rate provided by § 67-6-203 if the drugs or instruments purchased exempt were not used in the treatment of livestock or resold in the practice of veterinary medicine for treatment of livestock.

SECTION 99. Tennessee Code Annotated, Section 67-6-389, is amended by deleting subsection (c) in its entirety and substituting instead the following language:

(c) Persons seeking to make such purchases of private communications exempt from tax shall apply to the commissioner for an authorization declaring that such purchaser is entitled to the exemption. In order to obtain the exemption qualified purchasers shall provide a copy of such authorization or a fully completed Streamlined Sales Tax Certificate of Exemption to each dealer from which it intends to make exempt purchases. If a person purchases exempt private communications and such private communications services are not utilized for communications with a computer or telecommunications center located in this state, by a purchaser that has qualified for the headquarters tax credit provided for in § 67-6-224, or by an affiliate of such purchaser then the purchaser shall be liable for tax at rate applicable to the retail sale of such private communications service.

SECTION 100. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

67-6-387. There is exempt from the use tax imposed by this chapter the fabrication of computer software by a person for such person's own use and consumption.

SECTION 101. Tennessee Code Annotated, Section 67-6-393(b), is amended by inserting the following as a new, appropriately designated subdivision:

( ) Video game consoles;

SECTION 102. Tennessee Code Annotated, Section 67-6-402(b), is amended by deleting the language "suitable brackets of prices for applying the tax or any other method" and substituting instead the language "suitable methods for applying the tax".

SECTION 103. Tennessee Code Annotated, Title 67, Chapter 6, Part 4, is amended by adding the following new section:

67-6-409. (a) When a purchaser claims an exemption:

(1) The seller or certified service provider must obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase in accordance with the rules and regulations promulgated by the commissioner. Such identifying information shall include: name, address, type of business, reason for exemption and a tax identification number issued by this state or other governmental authority as required by the commissioner;

(2) The seller or certified service provider shall obtain either a copy of the purchaser's authorization for exemption issued by the commissioner or obtain, either in paper or electronic medium, a fully completed Streamlined Sales Tax Certificate of Exemption as approved by the governing board of the Streamlined Sales and Use Tax Agreement. The seller or certified service provider is not required to obtain a purchaser's signature for an electronic form of a certificate of exemption; however, the seller or certified service provider must obtain from the purchaser all other information for proof of a claimed exemption regardless of the medium in which the transaction occurred;

(3) The commissioner may utilize a system wherein purchasers qualifying to make tax exempt purchases are issued an identification number which must be presented to the seller at the time of the sale; and

(4) The seller and certified service provider must maintain proper records of exempt transactions and provide them to the commissioner when requested.

(b) Sellers and certified service providers that follow the requirements of this section are not liable for the tax imposed by this chapter otherwise applicable, if it is determined that the purchaser improperly claimed an exemption, in which case the purchaser shall be liable for the tax. In the event a seller has a recurring business relationship with a purchaser, the seller and certified service provider are relieved from the tax imposed by this chapter, if the seller has obtained a blanket exemption certificate from the purchaser. A seller and a certified service provider shall not be required to update or renew blanket exemption certificates when there is a recurring business relationship. For purposes of this subsection (b), a "recurring business relationship" means at



least one (1) sale transaction within a period of twelve (12) consecutive months. The seller or certified service provider shall remain liable for the tax if the purchaser claims an entity-based exemption and the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in this state, and the standard exemption certificate clearly and affirmatively indicates the claimed exemption is not available in this state.

(c) Sellers or certified service providers that do not follow the requirements of this section shall be liable for the tax.

(d) Sellers that fraudulently fail to collect tax or that solicit a purchaser to participate in the unlawful claim of an exemption shall be liable for the tax.

SECTION 104. Tennessee Code Annotated, Section 67-6-501(d), is amended by deleting the language "on the gross charge of" and substituting instead the language "on the sales price of".

SECTION 105. Tennessee Code Annotated, Section 67-6-504, is amended by deleting subsection (e) in its entirety and substituting instead the following language:

(e) Any dealer who is liable for the tax imposed by this chapter may round off all figures used on the sales and use tax return to the nearest dollar amount.

SECTION 106. Tennessee Code Annotated, Section 67-6-504, is amended by adding the following new subsections:

(h) In computing the tax due or to be collected as the result of any transaction, the tax rate shall be the sum of the applicable state and local rate, if any, and the tax computation must be carried to the third decimal place. Whenever the third decimal place is greater than four, the tax shall be rounded to the next whole cent.

(i) A seller may elect to compute the tax due on a transaction on either an item or an invoice basis, and may apply the rounding rule provided for in subsection (h) to the aggregated state and local taxes. A seller shall not be required to collect the tax on a bracket system.

(j)(1) Any dealer making sales subject to the tax imposed by this chapter may choose to collect and remit taxes as a Model 1 or Model 2 seller, subject to the provisions of this subsection (j). For purposes of this subsection (j), tax includes any associated interest and penalty.

(2) A dealer choosing Model 1 must contract with a certified service provider and must permit the certified service provider to determine the tax due, collect the tax, file returns, and remit the tax to the appropriate state on all of its sales, leases, or rentals of tangible personal property or services that are subject to the tax levied by this chapter. A Model 1 seller's liability to this state for the tax levied by this chapter is limited to the tax due on its own purchases, the tax due on any of its sales, leases, or rentals which are made outside the system provided by the certified

service provider, and the tax due in the event of fraud by the Model 1 seller. The certified service provider shall not have any additional liability for state or local option taxes imposed by this chapter:

(A) If the Model 1 seller charged and collected an incorrect amount of sales or use tax in reliance on erroneous data made available for review but not discovered during the certification of the certified service provider's automated system, provided that such error is corrected within ten (10) days of the date of notification by the commissioner to correct the automated system. The commissioner may allot additional time upon a showing by the certified service provider of the need for additional time to correct the automated system; or

(B) If an item or transaction is incorrectly classified as to its taxability within the certified service provider's automated system that was certified by this state, provided that such taxability error is corrected within ten (10) days of the date of the notification by the commissioner to correct the automated system.

Beginning on the first day after the allotted period of time to correct the certified service provider's automated system, the certified service provider shall be liable for the tax, penalty and interest resulting from the failure to correct the certified service provider's automated system. The provisions of this subdivision (j)(2) do not apply to errors in charging and collecting or remitting sales or use tax that are the result of classifying the item or transaction within a defined term or other classification within the certified service provider's automated system.

(3) A dealer choosing Model 2 must use a certified automated system to determine the tax due on all of its sales, leases, or rentals of tangible personal property or services that are subject to the tax levied by this chapter. Model 2 sellers shall not have any additional liability for state or local option taxes imposed by this chapter, if the Model 2 seller charged and collected or remitted an incorrect amount of sales or use tax in reliance on the certification of the certified automated system provided such error is corrected within ten (10) days of the date of notification by the commissioner to correct or notification by the provider of the certified automated system of the availability of updates to correct the certified automated system. Beginning on the eleventh day, the Model 2 seller shall be liable for the tax, penalty, and interest resulting from the failure to correct or update the certified automated system for errors resulting from reliance on the certification.

(k) A certified service provider has, and is subject to, all of the rights, liabilities, duties and responsibilities imposed by this chapter as if it were the Model 1 seller for whom the certified service provider has agreed to perform all sales and use tax functions, except the Model 1 seller's obligation to remit tax on its own purchases.

(l) The commissioner may enter into contracts with certified service providers for the collection and reporting of the tax imposed under this chapter. The commissioner may enter into such contracts in conjunction with other states.

SECTION 107. Tennessee Code Annotated, Section 67-6-507, is amended by deleting subsection (e) in its entirety and substituting instead the following:

(e) A deduction from taxable sales shall be allowed for bad debts arising from a sale on which the tax imposed by this chapter was paid.

(1) Any deduction taken that is attributed to bad debts shall not include interest.

(2) For purpose of calculating the deduction, a "bad debt" is as defined in 26 U.S.C. § 166. However, the amount calculated pursuant to 26 U.S.C. § 166 shall be adjusted to exclude: financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid; expenses incurred in attempting to collect any debt; and repossessed property.

(3) The deduction provided for by this subsection (e) shall be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection (e), a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(4) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

(5) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, the taxpayer may file a refund claim and receive a refund pursuant to § 67-1-1802. The statute of limitations for filing such claim shall be measured from the due date of the return on which the bad debt could first be claimed.

(6) Where filing responsibilities have been assumed by a certified service provider, the service provider may claim, on behalf of the seller, any bad debt allowance provided by this section; provided, that the service provider credits or refunds the full amount of any bad debt allowance or refund received to the seller.

(7) For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account shall be applied first proportionally to the taxable price of the property or

service and the sales tax thereon, and then to interest, service charges, and any other charges.

(8) In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among other states, such allocation shall be permitted.

SECTION 108. Tennessee Code Annotated, Section 67-6-509, is amended by adding the following new subsections:

(c) Notwithstanding subsection (a), a Model 1 seller under the Streamlined Sales and Use Tax Agreement shall not be entitled to the vendor's compensation described in subsection (a).

(d)(1) In addition to any compensation that may be provided under subsection (a), the commissioner is authorized to provide the monetary allowances required to be provided by the state to certified service providers and volunteer sellers pursuant to Article VI of the Streamlined Sales and Use Tax Agreement as it may be amended from time to time.

(2) Such monetary allowances shall be in the form of vendor's compensation allowances that certified service providers or volunteer sellers are permitted to retain from taxes due pursuant to this chapter that are to be collected and remitted to this state on sales of the volunteer seller in this state.

(3) The details of such monetary allowances shall, in the case of a Model 1 seller, be outlined in each contract between the Streamlined Sales and Use Tax Agreement governing board and the certified service provider. Vendor's compensation rates on taxes due that may be retained by a volunteer seller that is a Model 2 seller and all other volunteer sellers that are not Model 2 sellers shall be determined by the commissioner in accordance with the provisions of Article VI of the Streamlined Sales and Use Tax Agreement and the commissioner shall cause such rates and their effective dates to be filed with the secretary of state for publication in the *Tennessee Administrative Register*.

(4) Vendor's compensation rates published in the *Tennessee Administrative Register* shall remain in effect until new rates determined by the commissioner and published in the *Tennessee Administrative Register* become effective.

(e) For purposes of subsection (d), "volunteer seller" means a seller that registered in this state through the Streamlined Central Registration System for sales and use tax purposes, does not have a fixed business location in this state, and otherwise meets the definition of "volunteer seller" as defined by the Streamlined Sales and Use Tax governing board and "taxes due" means sales or use tax revenue generated for Tennessee by a volunteer seller pursuant to this chapter.

SECTION 109. Tennessee Code Annotated, Section 67-6-542, is repealed in its entirety.

SECTION 110. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following new section:

67-6-533. Dealers and certified service providers have no liability to the state or local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the commissioner on tax rates, boundaries, or taxing jurisdiction assignments. Purchasers shall have no liability to the state or local jurisdictions where such purchaser or purchaser's seller or certified service provider relied on erroneous tax rate or local jurisdiction boundary or jurisdiction assignment data. The erroneous tax rate or local jurisdiction boundary or jurisdiction assignment data must be the most recent published information utilized by the taxpayer or certified service provider that is effective on the date of the transaction. Taxpayers and certified service providers shall provide records evidencing reliance on such erroneous information.

SECTION 111. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following new section:

67-6-534. Notwithstanding § 67-6-806(a), if a nine digit zip code designation is not available for a street address, or if a seller is unable to determine the nine digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine digit zip code designation by utilizing software approved by the member states to the Streamlined Sales Tax Agreement that makes this designation from the street address and the five digit zip code of the purchaser. The provisions of this section do not apply when the product purchased is received by the purchaser at the business location of the seller.

SECTION 112. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following new section:

67-6-535. The department may enter into a reciprocal agreement with the comparable department of another state to furnish records concerning purchases made by citizens of the other state from a dealer in this state where the dealer collects neither a sales nor a use tax on such sales; provided, however, that the other state agrees to furnish the same records to this state and each sale is in excess of five hundred dollars (\$500). All dealers in Tennessee making sales to purchasers in another state where no sales or use tax is collected shall furnish the department copies of all such invoices or suitable substitutes for sales in excess of five hundred dollars (\$500) upon request of the department; provided, however, that the department notifies such dealers of the existence of a reciprocal agreement.

SECTION 113. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following new section:

67-6-536. (a) Model 1 or 2 sellers with business locations in this state shall submit their returns in such format as required by the commissioner. Model 1 or 2 sellers that do not have business locations in this state may submit their returns in such format as adopted by the member states to the Streamlined Sales and Use Tax Agreement; provided, however, that all such returns shall be filed electronically.

(b) Notwithstanding any provision of law to the contrary, the commissioner is authorized to require Model 1 or 2 sellers that submit returns in a format adopted by the member states to the Streamlined Sales and Use Tax Agreement to submit once a year an informational return as permitted by the member states to the Streamlined Sales and Use Tax Agreement.

(c) Notwithstanding the provisions of § 67-1-703 to the contrary, all remittances from Model 1 or 2 sellers shall be made electronically, using ACH Credit or ACH Debit processes. The commissioner is authorized to provide for an alternative method of making the payment in the event the electronic funds transfer process fails.

(d) Notwithstanding any provision of law to the contrary, a seller that is:

(1) Registered using the central registration system provided by states that are members of the Streamlined Sales and Use Tax Agreement;

(2) Does not have a legal requirement to register in this state;

(3) Is not a Model 1 or 2 seller; and

(4) Has not accumulated more than one thousand dollars (\$1,000) in state and local sales and use taxes;

shall be permitted to file a sales and use tax return at any time within one (1) year of the month of initial registration and shall be permitted to file future returns on an annual basis in succeeding years. Such returns shall be due the twentieth day of the month following the tax period covered by the return. A seller that has accumulated Tennessee state and local sales and use tax funds in the amount of one thousand dollars (\$1,000) shall file a return by the twentieth day of the month following the month in which such accumulated taxes reach or exceed one thousand dollars (\$1,000). Nothing in this subsection (d) shall relieve a seller who collects Tennessee sales or use tax from its customers from liability for failure to pay over those funds to the commissioner on behalf of the state.

SECTION 114. Tennessee Code Annotated, Section 67-6-537, is amended by deleting the current language in its entirety and substituting instead the following:

67-6-537. (a) This section applies to sellers who satisfy all of the following requirements:

(1) The seller registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in this state, in accordance with the terms of the Streamlined Sales and Use Tax Agreement within twelve (12) months of the effective date of this state's becoming a member in substantial compliance with the agreement;

(2)(A) During the twelve-month period preceding the state's becoming a member in substantial compliance with the agreement, the seller was not registered to collect and remit tax under this chapter; or

(B) During the twelve-month period preceding the state's becoming an associate member of the agreement, the seller was not registered to collect and remit tax under this chapter; and

(3) There is no audit or assessment pending with respect to the seller, and the department has not notified the seller that it will be the subject of an audit.

(b) A seller who satisfies the criteria set out in subsection (a) is not liable for sales or use tax not collected from its customers prior to the date of its registration, nor liable for any related interest or penalty, subject to the limitations contained in subsection (c).

(c)(1) A seller remains liable for tax collected from its customers but not remitted to the state, and remains liable for any related interest and penalty.

(2) A seller remains liable for any use tax due that arises from its capacity as a buyer and user or consumer of taxable items.

(3) The release from liability provided by subsection (b) is void, unless the seller maintains its registration and continues to collect and remit applicable sales and use taxes for at least thirty-six (36) months. The statute of limitations provided in § 67-1-1501 is tolled during the thirty-six month period.

(4) Fraud or intentional misrepresentation of a material fact voids the release from liability provided by subsection (b).

(d) A dealer or certified service provider shall not have any additional liability for state or local option taxes imposed by this chapter, if the taxpayer or certified service provider charged and collected or remitted an incorrect amount of sales or use tax in reliance on erroneous data in the taxability matrix provided by the department pursuant to Section 328(A) of the Streamlined Sales and Use Tax Agreement. Such erroneous data in the taxability matrix provided by the department must be the most recent published information utilized by the taxpayer or certified service provider that is effective on the date of the transaction. Taxpayers and certified service providers shall provide records evidencing reliance on such erroneous data. The provisions of the section do not apply to errors in charging and collecting or remitting sales or use tax that are the

result of classifying the item or transaction within a defined term or defined category included in the taxability matrix.

SECTION 115. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following new section:

67-6-538. (a) These customer refund procedures apply when a purchaser seeks a refund of over-collected sales or use taxes from a seller.

(b) Nothing in this section shall require the department to refund to a purchaser taxes collected in error by a seller from the purchaser.

(c) Nothing in this section shall operate to extend any person's time to seek a refund of sales or use taxes collected or remitted in error.

(d) A cause of action against a seller for the over-collected sales or use taxes does not accrue until a purchaser has provided a written notice of the over-collection and a request for a refund to the seller and the seller has had sixty days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

(e) In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller:

(1) Uses either a certified service provider or a certified automated system; and

(2) Has remitted to the state all taxes collected less any deductions, credits, or collection allowances.

SECTION 116. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following new section:

67-6-541. (a)(1) Notwithstanding Acts 2002, Chapter 856, § 4(g), sales to or use by a contractor, subcontractor, or material vendor of tangible personal property, including rentals thereof and labor or services performed in the fabrication, manufacture, delivery, or installation of such tangible personal property, when such property is sold or used solely in performance of a lump sum or unit price construction contract entered into prior to July 15, 2002, or awarded by the state or a political subdivision pursuant to a bid opening which occurred prior to July 15, 2002, shall be subject to tax at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 plus the applicable local option sales tax rate under the provisions of Part 7 of this chapter. In addition, sales to or use by a subcontractor of tangible personal property, including rentals thereof and labor or services performed in the fabrication, manufacture, delivery, or installation of such tangible personal property, when such property is sold or used solely in performance of a written subcontract entered into prior to September 1, 2002, if such subcontract is made pursuant to a general contract



described in this subsection, shall be subject to tax at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 plus the applicable local option sales tax rate under the provisions of Part 7 of this chapter.

(2) If the tax in subdivision (a)(1) is paid to a vendor, such contractor or subcontractor may file a claim with the commissioner for a refund of any such tax paid to any of the contractor's vendors at a rate in excess of six percent (6%) plus the local option sales tax rate in effect or operative on July 1, 2002 in the county or municipality in which the sale is sourced.

(3) If the tax in subdivision (a)(1) is remitted directly to the department by such contractor or subcontractor, the contractor or subcontractor may claim a credit on its sales and use tax return covering the same period in which the tax is paid. Such credit shall equal the amount of tax remitted to the department at a rate in excess of six percent (6%) plus the local option sales tax rate in effect or operative on July 1, 2002 in the county or municipality in which the sale is sourced.

(b)(1) Notwithstanding any provision to the contrary, sales to or use by a contractor, subcontractor, or material vendor of tangible personal property, including rentals thereof and labor or services performed in the fabrication, manufacture, delivery, or installation of such tangible personal property, when such property is sold or used solely in performance of a lump sum or unit price construction contract entered into prior to January 1, 2008, or awarded by the state or a political subdivision of the state pursuant to a bid opening which occurred prior to January 1, 2008, shall be subject to tax as otherwise provided in this chapter.

(2) If the tax in subdivision (b)(1) is paid to a vendor, such contractor or subcontractor may file a claim with the commissioner for a refund of any such tax paid to any of the contractor's vendors that is in excess of the amount that would have been due by application of Tenn. Comp. R. & Regs. 1320-5-1-.71, as in effect on January 1, 2007.

(3) If the tax in subdivision (b)(1) is remitted directly to the department by such contractor or subcontractor, the contractor or subcontractor may claim a credit on its sales and use tax return covering the same period in which the tax is paid. Such credit shall equal the amount of tax that is in excess of the amount that would have been due by application of Tenn. Comp. R. & Regs. 1320-5-1-.71, as in effect on January 1, 2007.

(c) For purposes of this section the term "lump sum or unit price construction contract" means a written contract for the construction of improvements to real property under which the amount payable to the contractor, subcontractor, or material vendor is fixed without regard to the costs incurred in the performance of the contract.

SECTION 117. Tennessee Code Annotated, Title 67, Chapter 6, Part 6, is amended by adding the following new section:

67-6-608. (a) Notwithstanding the provisions of §§ 67-6-601 and 67-6-602, a person may register using the central, electronic registration system provided by Streamlined Sales and Use Tax Agreement governing board; and furthermore the commissioner shall permit a person to register through an agent under procedures adopted by the Streamlined Sales and Use Tax Agreement governing board.

(b) By registering using the central, electronic system, the seller agrees to collect and remit sales and use taxes for all taxable sales sourced to Tennessee. If Tennessee ceases to be a member of the agreement, the seller remains liable to remit all taxes previously collected on sales sourced to this state.

(c) The fact that a person has registered pursuant to this section shall not be used in determining whether such person so registered has sufficient nexus with Tennessee so as to be subject to any tax at any time.

SECTION 118. Tennessee Code Annotated, Section 67-6-702(g), is amended by adding the following as a new, appropriately designated subdivision:

( ) Local tax with respect to "prepaid calling services" and "prepaid wireless calling services" that are subject to tax shall be imposed at the rate of tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-702(a) and at the time of the retail sale of prepaid calling service and prepaid wireless calling service.

SECTION 119. Tennessee Code Annotated, Section 67-6-702, is amended by adding the following new subsection:

(h) Notwithstanding any other law to the contrary, sales of tangible personal property upon which a state sales and use tax is levied shall be subject to a local sales and use tax at the rate of two and one-quarter percent (2.25%) when obtained from any vending machine or device.

SECTION 120. Tennessee Code Annotated, Section 67-6-710, is amended by adding the following as a new, appropriately designated subsection:

( ) (1) Proceeds of the tax on sales of tangible personal property obtained from any vending machine or device as provided for in § 67-6-702 shall be distributed to the counties based on the ratio of local tax collections in the county under this section over total tax collections in all counties under this section.

(2) The amount received by the county under subdivision (1) of this subsection shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to the cities or towns in the county based on the ratio of total collections in the municipality to total collections in the county.

SECTION 121. Tennessee Code Annotated, Section 67-6-802, is amended by deleting subdivision (1) in its entirety and substituting instead the following:

(1) For purposes of §§ 67-6-803 and 67-6-804, "agreement" means the Streamlined Sales and Use Tax Agreement as amended and adopted on January 27, 2001, by the national conference of state legislatures' special task force on state and local taxation of telecommunications and electronic commerce and adopted by the executive committee of the national conference of state legislatures; for purposes of §§ 67-6-804 through 67-6-806, "agreement" means the agreement styled "Streamlined Sales and Use Tax Agreement", adopted November 12, 2002, by the Streamlined Sales Tax Implementing States, including any amendment to the agreement so long as the amendment has also been adopted by the Streamlined Sales Tax Governing Board.

SECTION 122. Tennessee Code Annotated, Section 67-6-802, is amended by deleting subsections (2) and (3) in their entirety.

SECTION 123. Tennessee Code Annotated, Section 67-6-802(7), is amended by deleting the language "and the District of Columbia;" and substituting instead ", the District of Columbia and the Commonwealth of Puerto Rico;".

SECTION 124. Tennessee Code Annotated, Section 67-6-806, is amended by deleting the language of the section in its entirety and substituting instead the following:

(a) The commissioner shall provide and maintain a database that describes boundary changes for all counties, cities and towns that levy a tax pursuant to Part 7 of this chapter. This database shall include a description of the change and the effective date of the change for sales and use tax purposes.

(b) The commissioner shall provide and maintain a database of all sales and use tax rates for all counties, cities and towns of the jurisdictions that levy a tax pursuant to Part 7 of this chapter. For the identification of the state, counties, cities and towns, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology.

(c) The commissioner shall provide and maintain a database that assigns each five (5) digit and nine (9) digit zip code within the state to the proper tax rates and jurisdictions. If the zip code area includes more than one (1) local tax rate, the rate assigned to that area must be the lowest rate otherwise applicable within the area.

(d) The commissioner shall participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, compiled in 4 U.S.C. § 119. If the commissioner develops an address-based assignment system pursuant to the Mobile Telecommunications Sourcing Act, a seller may use that system in place of the system provided for in subsection (c).

SECTION 125. Tennessee Code Annotated, Section 67-6-807, is repealed in its entirety.

SECTION 126. Tennessee Code Annotated, Section 67-6-808, is repealed in its entirety.

SECTION 127. Tennessee Code Annotated, Section 6-51-115(b), is amended by adding the following as a new subdivision (3):

When the amount of local option sales tax produced by businesses in the annexed area cannot be determined from sales tax returns filed by the businesses, the commissioner may determine the amount to be distributed to the county over the fifteen (15) year period based on the best information available. For this purpose, the commissioner may use information obtained from business tax returns or obtain additional information from the businesses involved.

SECTION 128. Tennessee Code Annotated, Section 6-51-115, is amended by adding the words, numbers, symbol and punctuation "except that § 67-6-716 shall control the effective date of local jurisdictional boundary changes for sales and use tax purposes," between the word and punctuation "contrary," and the word "whenever" in the first sentence of subsection (a).

SECTION 129. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part:

#### PART 23 – SPECIAL USER PRIVILEGE TAX LAW

67-4-2301. This part shall be known and may be cited as the "Special User Privilege Tax Law".

67-4-2302. (a) There is levied on the purchase, use, importation for use, or consumption of the goods and services named in this part, at the rates specified by this part, a user privilege tax to be paid by the purchaser, user, or consumer.

(b) The Commissioner of Revenue shall administer and enforce the assessment and collection of the taxes levied by this part. All persons subject to the tax levied by this part are required to register with the Department of Revenue.

(c) The exemptions provided for in §§ 67-6-308, 67-6-322, 67-6-325, 67-6-326, 67-6-328, 67-6-329, 67-6-331, 67-6-340 and 67-6-384 are applicable to the tax levied under this part.

(d)(1)(A) The taxes levied under this part shall be due and payable monthly, on the first day of each month, and for the purposes of ascertaining the amount of tax payable under this part, it shall be the duty of all dealers on or before the twentieth day of each month to transmit to the commissioner returns showing the purchase price arising from the purchase, use, importation for use, or consumption of the goods and services taxed pursuant to this part during the preceding calendar month.

(B) At the time of transmitting the return required by this subsection (d) to the commissioner, the dealer shall remit to the commissioner therewith the amount of tax due, and failure to so remit such tax shall cause the tax to become delinquent.

(2)(A) The commissioner is authorized to prescribe all rules and regulations necessary for the administration of this part, and for the collection of the taxes thereby imposed.

(B) Rules and regulations not inconsistent with this part when promulgated by the commissioner, and approved by the attorney general and reporter, shall have the force and effect of law.

(3)(A) When any person shall fail to file any form, statement, report or return required to be filed with the commissioner, after being given written notice of same, the commissioner is authorized to determine the tax liability of such person from whatever source of information may be available to the commissioner or the commissioner's delegates.

(B) An assessment made by the commissioner pursuant to this authority shall be binding as if made upon the sworn statement, report or return of the person liable for the payment of such tax; and any person against whom such an assessment is lawfully made shall thereafter be estopped to dispute the accuracy thereof, except upon filing a true and accurate return, together with such supporting evidence as the commissioner may require, indicating precisely the amount of the alleged inaccuracy.

(4)(A) It is the duty of every person required to pay a tax under this part to keep and preserve records showing the gross amount of special user privilege tax owed to the state, and the amount of such person's purchases, uses, importations for use, or consumption taxable under this part, and such other books of account as may be necessary to determine the amount of tax, and all such books and records shall be open to inspection at all reasonable hours to the commissioner or any person duly authorized by either of them.

(B) All such books and records shall be maintained by the taxpayer for a period of three (3) years from December 31 of the year in which the taxpayer is responsible for paying the tax on the transaction or transactions represented by the record.

(e) Any tax levied by this part is a transactional tax in lieu of the sales or use tax and shall be considered a sales or use tax for purposes of reciprocity and giving credit for sales or use tax paid.

67-4-2303. (a) There is levied a tax of one and one-half percent (1.5%) on the purchase price of water, and a tax of one and one-half percent (1.5%) on the

purchase price of gas, electricity, fuel oil, coal, and other energy fuel, sold to or used by manufacturers.

(b) For the purpose of this section, "manufacturer" means one whose principal business is fabricating or processing tangible personal property for resale.

(c) Water, gas, electricity, fuel oil, coal, and other energy fuel sold to or used by manufacturers shall be exempt from the tax levied by this section whenever it may be established to the satisfaction of the commissioner, by separate metering or otherwise, that the substance is exclusively used directly in the manufacturing process, coming into direct contact with the article being fabricated or processed by the manufacturer, and being expended in the course of such contact. Whenever the commissioner determines that the use of such substance by a manufacturer meets such test, the commissioner shall issue a certificate evidencing the entitlement of the manufacturer to the exemption. The certificate may be revoked by the commissioner at any time upon a finding that the conditions precedent to the exemption no longer exist. The commissioner's action as to the granting or revoking of a certificate shall be reviewable solely by a petition for common law certiorari addressed to the chancery court of Davidson County.

(d) Any water or energy fuel used by a manufacturer in fabricating or processing tangible personal property for resale shall be exempt from the tax imposed by this section when same are produced or extracted directly by the manufacturer from facilities owned by the manufacturer or in the public domain.

(e) Notwithstanding the requirement of direct contact, there shall be exempt entirely from the tax imposed by this section electricity used to generate radiant heat for production of heat-treated glass when sold to or used by manufacturers; provided, however, that the manufacturer has applied for and received a certificate of exemption as required by this section.

(f)(1) The tax levied by this section shall also apply to the use of such substances by a person engaged at a location in packaging automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(A) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(B) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.

(2) "Packaging", as used in subdivision (f)(1), refers only to the fabrication and/or installation of that packaging that will accompany the automotive aftermarket product when sold at retail. The tax shall apply only to such substances used in the packaging process, if such use is

established to the satisfaction of the commissioner by separate metering or otherwise.

(g) Notwithstanding the requirement of direct contact, natural gas used to generate heat for the production of primary aluminum and aluminum can sheet products when sold to or used by manufacturers shall be exempt from the tax imposed by this section; provided, however, that the manufacturer applies for and receives a certificate of exemption as required by this section.

(h) There is also levied a tax of one and one-half percent (1.5%) on the purchase price of electricity sold to or used by a qualified data center as defined in § 67-6-102.

(i)(1) The tax collected on the use of water shall be distributed as follows:

(A) Sixty-seven percent (67%) shall be deposited to the state general fund; and

(B) The remaining thirty-three percent (33%) shall be distributed to incorporated municipalities in the proportion that the population of each bears to the aggregate population of the state and to counties in the proportion that the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census or other census authorized by law.

(2) The tax collected on the use of gas, electricity, fuel oil, coal, and other energy fuel shall be deposited to the state general fund.

67-4-2304. (a) There is levied a tax of seven percent (7%) on the purchase price of energy in the form of steam or chilled water purchased from an energy resource recovery facility operated in a county with a metropolitan form of government.

(b) The tax collected pursuant to this section shall be deposited in the state general fund.

67-4-2305. (a) There is levied a tax at the rate of five and one-quarter percent (5.25%) on the purchase price of tangible personal property, excluding items listed in §§ 67-4-2307, 67-4-2701, 67-6-302, 67-6-313(i), 67-6-321, and 67-6-331, sold and delivered to common carriers in this state for use outside this state.

(b) The tax collected under this section shall be distributed as follows:

(1) Seventy-one and forty-three hundredths percent (71.43%) shall be deposited to the state general fund; and

(2) The remaining twenty-eight and fifty-seven hundredths percent (28.57%) shall be distributed to incorporated municipalities in the

proportion that the population of each bears to the aggregate population of the state and to counties in the proportion that the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census or other census authorized by law.

(c) This section does not apply to sales of food and food ingredients, candy, dietary supplements, alcoholic beverages, tobacco and fuel.

67-4-2306. (a) There is levied a tax of six percent (6%) on the purchase price of diesel fuel sold to or used by a common carrier that is used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce.

(b) The tax collected under this section shall be distributed to the transportation equity trust fund.

67-4-2307. It is not the intention of this part to levy a tax upon articles of tangible personal property imported into this state for export, or produced or manufactured in this state for export. If the sale of tangible personal property imported into this state is sourced to this state, this exemption shall apply; provided, that the purchaser's use of the tangible personal property imported into this state is limited to storage, inspection, or repackaging for shipment of the property for export outside this state.

67-4-2308. (a) The taxes imposed by this part shall not apply to any property or services:

(1) Upon which the sales or use tax imposed by Chapter 6 of this title has been paid;

(2) Upon which a sales or use tax was previously legally imposed and collected by another state, at a rate equal to or greater than the rate of tax provided for in this part; or

(3) Upon which another state has previously legally imposed and collected a tax substantially similar to the tax imposed by this part, at a rate equal to or greater than the rate of tax provided for in this part.

(b) If the taxes described in subsection (a) are at a rate lesser than the rate imposed by this part, the tax imposed by this part shall be at the difference between the rate of tax imposed by this part and the rate of the tax described in subsection (a).

(c) Notwithstanding subsections (a) and (b), the tax levied by this part shall apply without reduction for any sales or use tax, or tax substantially similar to the tax levied by this part, that is paid to another state on the same transaction, if such state does not have the first right to tax or has no statutory provisions to reduce its sales or use tax, or tax substantially similar to the tax levied by this part, by any payment of the tax levied by this part. Each taxpayer seeking a reduction of the tax levied by this part due to payment of a sales or use



tax or tax substantially similar to the tax levied by this part to another state on the same transaction shall furnish evidence to the satisfaction of the commissioner that the tax statutes of the other state would allow a reduction of its sales or use taxes or tax substantially similar to the tax levied by this part in like factual situations.

(d) The taxpayer shall bear the burden of maintaining documentary proof that the taxes described in subsection (a) have been paid.

SECTION 130. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part:

PART 24 – CABLE AND SATELLITE TELEVISION SERVICE

67-4-2401. (a) There is levied a privilege tax of nine percent (9%) of the gross charge for providing video programming services as defined in § 67-6-102, when such services are delivered to the subscriber at a location in Tennessee.

(b) Such tax shall not apply to the first fifteen dollars (\$15.00) of the gross charges for such video programming services.

(c) The tax collected under this section shall be distributed as follows:

(1) Eighty-two percent (82%) shall be deposited to the state general fund; and

(2) The remaining eighteen percent (18%) shall be distributed to incorporated municipalities in the proportion that the population of each bears to the aggregate population of the state and to counties in the proportion the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census and other census authorized by law.

67-4-2402. (a) There is levied a privilege tax of eight and one-quarter percent (8.25%) of the gross charge for services provided by a direct-to-home satellite service provider, when such services are delivered to the subscriber at a location in Tennessee.

(b) The tax collected under this section shall be deposited to the state general fund.

67-4-2403. (a) The taxes levied in this part shall be collected from the dealer as defined in § 67-6-102 and paid at the time and in the manner provided in this part. The tax imposed by this chapter shall be collected by the dealer from the consumer insofar as it can be done.

(b) The providers shall indicate in some definite manner whether their customers are paying this privilege tax. This indication must be stated on the ticket, invoice, or other record given to the customer.

67-4-2404. (a) The taxes levied under this part shall be due and payable monthly, on the first day of each month, and for the purposes of ascertaining the amount of tax payable under this chapter, it shall be the duty of all dealers on or before the twentieth day of each month to transmit to the commissioner returns showing the gross charges arising from the sale of services taxable under this chapter during the preceding calendar month.

(b) At the time of transmitting the return required under this part to the commissioner, the dealer shall remit to the commissioner therewith the amount of tax due, and failure to so remit such tax shall cause the tax to become delinquent.

67-4-2405. (a) The Commissioner of Revenue shall administer and enforce the assessment and collection of the taxes levied by this part.

(b)(1) The commissioner is authorized to prescribe all rules and regulations necessary for the administration of this part, and for the collection of the taxes thereby imposed.

(2) Rules and regulations not inconsistent with this part when promulgated by the commissioner, and approved by the attorney general and reporter, shall have the force and effect of law.

(c) The commissioner is empowered to examine the books and records of any person subject to the provisions of this part.

67-4-2406. (a) When any person shall fail to file any form, statement, report or return required to be filed with the commissioner, after being given written notice of same, the commissioner is authorized to determine the tax liability of such person from whatever source of information may be available to the commissioner or the commissioner's delegates.

(b) An assessment made by the commissioner pursuant to this authority shall be binding as if made upon the sworn statement, report or return of the person liable for the payment of such tax. Any person against whom such an assessment is lawfully made shall thereafter be estopped to dispute the accuracy thereof, except upon filing a true and accurate return, together with such supporting evidence as the commissioner may require, indicating precisely the amount of the alleged inaccuracy.

67-4-2407. (a) It is the duty of every person required to pay a tax under this part to keep and preserve records showing the gross amount of tax levied by this part owed to the state, and the amount of such person's gross receipts taxable under this part, and such other books of account as may be necessary to determine the amount of tax under this part, and all such books and records shall be open to inspection at all reasonable hours to the commissioner or any person duly authorized by either of them.

(b) All such books and records shall be maintained by the taxpayer for a period of three (3) years from December 31 of the year in which the taxpayer is

responsible for paying the tax on the transaction or transactions represented by the record.

67-4-2408. The exemptions provided for in §§ 67-6-308, 67-6-322, 67-6-325, 67-6-328, and 67-6-384 are applicable to the tax levied under this part. In addition, all sales made to the State of Tennessee or any county or municipality within the state shall be exempt from the tax levied under this part.

67-4-2409. The tax imposed by this part shall not apply when the video programming services or direct-to-home satellite services are sold for resale. "For resale" means that the customer of the video programming service or direct-to-home satellite service provider purchases the services, sells those services to others, and is liable for the tax imposed by this part, or for the sales tax imposed by Chapter 6 of this title, on its sales of those specific services. The commissioner is authorized and empowered to require the use of certificates of resale, or other satisfactory proof, as proof that any sale claimed to be a sale for resale is in fact a sale for resale. In cases where a customer purchases some services for resale and others for the customer's use and consumption, the seller must separate the taxable and resale amounts on the bill, invoice, or statement provided to its customer.

67-4-2410. A person who has paid the tax imposed by this part on any sale taxable under this part may take credit for any bad debts arising from such sale, in any return filed under the provisions of this part. The provisions of §§ 67-6-507(e) and 67-1-1802(d) shall apply to such credit.

SECTION 131. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part:

#### PART 25 – DYED DIESEL FUEL

67-4-2501. (a) There is levied a privilege tax of seven percent (7%) of gross charges on the retail sale of dyed diesel fuel, as that term is defined in § 67-3-103. For purposes of this part, retail sale shall mean the same as defined in § 67-6-102.

(b) The commissioner is authorized and empowered to require the use of certificates of resale, or other satisfactory proof, as proof that any sale claimed to be other than a "retail sale" is in fact not a retail sale.

(c) The tax collected under this section shall be deposited to the state general fund.

67-4-2502. (a) The tax shall be collected from the dealer as defined in § 67-6-102 and paid at the time and in the manner hereinafter provided. The tax imposed by this part shall be collected by the dealer from the consumer insofar as it can be done.

(b) The dealer shall indicate in some definite manner whether its customers are paying this privilege tax. This indication must be stated on the ticket, invoice, or other record given to the customer.

67-4-2503. Sales to governmental entities that are exempt from the sales tax imposed by Title 67, Chapter 6, and sales of fuel to a "qualified farmer or nurseryman", as defined in § 67-6-207 for "agricultural purposes" as defined in § 67-3-103, shall be exempt from the tax imposed by this part.

67-4-2504. (a) The taxes levied under this part shall be due and payable monthly, on the first day of each month, and for the purposes of ascertaining the amount of tax payable under this part, it shall be the duty of all dealers on or before the twentieth day of each month to transmit to the commissioner returns showing the gross charges of fuel taxable under this part during the preceding calendar month.

(b) At the time of transmitting the return required hereunder to the commissioner, the dealer shall remit to the commissioner therewith the amount of tax due, and failure to so remit such tax shall cause the tax to become delinquent.

67-4-2505. (a) The Commissioner of Revenue shall administer and enforce the assessment and collection of the taxes levied by this part.

(b)(1) The commissioner is authorized to prescribe all rules and regulations necessary for the administration of this part, and for the collection of the taxes thereby imposed.

(2) Rules and regulations not inconsistent with this part when promulgated by the commissioner, and approved by the attorney general and reporter, shall have the force and effect of law.

(c) The commissioner is empowered to examine the books and records of any person subject to the provisions of this part.

67-4-2506. (a) When any person shall fail to file any form, statement, report or return required to be filed with the commissioner, after being given written notice of same, the commissioner is authorized to determine the tax liability of such person from whatever source of information may be available to the commissioner or the commissioner's delegates.

(b) An assessment made by the commissioner pursuant to this authority shall be binding as if made upon the sworn statement, report or return of the person liable for the payment of such tax; and any person against whom such an assessment is lawfully made shall thereafter be estopped to dispute the accuracy thereof, except upon filing a true and accurate return, together with such supporting evidence as the commissioner may require, indicating precisely the amount of the alleged inaccuracy.

67-4-2507. (a) It is the duty of every person required to pay a tax under this part to keep and preserve records showing the gross amount of tax levied by this part owed to the state, and the amount of such person's gross retail sales taxable under this part, and such other books of account as may be necessary to determine the amount of tax hereunder, and all such books and records shall be

open to inspection at all reasonable hours to the commissioner, the commissioner's delegates, or any person duly authorized by either of them.

(b) All such books and records shall be maintained by the taxpayer for a period of three (3) years from December 31 of the year in which the taxpayer is responsible for paying the tax on the transaction or transactions represented by the record.

67-4-2508. A person who has paid the tax imposed by this part on any sale taxable under this part may take credit for any bad debts arising from such sale, in any return filed under the provisions of this part. The provisions of §§ 67-6-507(e) and 67-1-1802(d) shall apply to such credit.

SECTION 132. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part:

#### PART 27 – AVIATION FUEL

67-4-2701. There is levied a privilege tax of four and one-half percent (4.5%) of the gross charge for the sale, use, consumption, distribution and storage of aviation fuel used in the operation of airplane or aircraft motors. For the purpose of this part, "gross charge" shall include the actual price paid for the aviation fuel without any deductions from the actual price paid, except for federal excise tax.

67-4-2702. (a) The taxes levied in this part shall be collected from the dealer as defined in § 67-6-102, and paid at the time and in the manner provided in this part. The tax imposed by this chapter shall be collected by the dealer from the consumer insofar as it can be done.

(b) The dealer shall indicate in some definite manner whether the customer is paying this privilege tax. This indication must be stated on the ticket, invoice, or other record given to the customer.

(c) The tax levied by this section shall be paid by the purchaser in those cases where the seller of the aviation fuel is not liable to collect the tax.

(d) The tax levied by this part is a transactional tax in lieu of the sales or use tax and shall be considered a sales or use tax for purposes of reciprocity and giving credit for sales or use tax paid.

67-4-2703. (a) The taxes levied under this part shall be due and payable monthly, on the first day of each month, and for the purposes of ascertaining the amount of tax payable under this part, it shall be the duty of all dealers on or before the twentieth day of each month to transmit to the commissioner returns showing the gross charges arising from the sale of aviation fuel taxable under this part during the preceding calendar month.

(b) Each dealer shall also remit the amount of tax due with each return required in subsection (a). If the taxes due with the return are not remitted to the commissioner before the due date of the return, the return shall be considered

delinquent and penalty and interest shall attach to the taxes due as provided by law.

(c) Each dealer of aviation fuel shall include on the return a statement under penalty of perjury, evidencing the total amount in gallons of aviation fuel sold and the dollar amount collected from such sales, and any other information as may be required by the commissioner on forms prescribed by the department.

67-4-2704. (a) The Commissioner of Revenue shall administer and enforce the assessment and collection of the taxes levied by this part.

(b)(1) The commissioner is authorized to prescribe all rules and regulations necessary for the administration of this part, and for the collection of the taxes thereby imposed.

(2) Rules and regulations not inconsistent with this part when promulgated by the commissioner, and approved by the attorney general and reporter, shall have the force and effect of law.

(c) The commissioner is empowered to examine the books and records of any person subject to the provisions of this part.

67-4-2705. (a) When any person shall fail to file any form, statement, report or return required to be filed with the commissioner, after being given written notice of same, the commissioner is authorized to determine the tax liability of such person from whatever source of information may be available to the commissioner or the commissioner's delegates.

(b) An assessment made by the commissioner pursuant to this authority shall be binding as if made upon the sworn statement, report or return of the person liable for the payment of such tax; and any person against whom such an assessment is lawfully made shall thereafter be estopped to dispute the accuracy thereof, except upon filing a true and accurate return, together with such supporting evidence as the commissioner may require, indicating precisely the amount of the alleged inaccuracy.

67-4-2706. (a) It is the duty of every person required to pay a tax under this part to keep and preserve records showing the gross amount of tax owed to the state, and the amount of such person's gross charges taxable under this part, and such other books of account as may be necessary to determine the amount of the tax under this part, and all such books and records shall be open to inspection at all reasonable hours to the commissioner or any person duly authorized by either of them.

(b) All such books and records shall be maintained by the taxpayer for a period of three (3) years from December 31 of the year in which the taxpayer is responsible for paying the tax on the transaction or transactions represented by the record.

67-4-2707. The tax collected under this part shall be deposited to the transportation equity fund.

67-4-2708. The tax imposed by this part shall not apply when the aviation fuel is sold for resale. The commissioner is authorized and empowered to require the use of certificates of resale, or other satisfactory proof, as proof that any sale claimed to be a sale for resale is in fact a sale for resale.

67-4-2709. The exemptions provided for in §§ 67-6-308, 67-6-322, 67-6-325, 67-6-328, and 67-6-384 are applicable to the tax levied under this part. In addition, all sales made to the State of Tennessee or any county or municipality within the state shall be exempt from the tax levied under this part.

67-4-2710. There is exempt from the tax imposed by this chapter fuel and petroleum products sold to or used by a commercial air carrier, certified by the carrier to be used for consumption, shipment or storage in the conduct of its business as an air common carrier for a flight destined for or continuing from a location outside the United States.

67-4-2711. (a) A commercial air carrier may purchase aviation fuel without payment of tax to the dealer by presenting the dealer with a certificate issued pursuant to § 67-6-528, in which case the carrier becomes liable for reporting and payment of the privilege tax pursuant to the terms of this section.

(b) For purposes of this section, "commercial air carrier" means an entity authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property by air in interstate or foreign commerce.

67-4-2712. (a) The tax imposed by this part shall not apply to any aviation fuel:

(1) Upon which a sales or use tax was previously legally imposed and collected by another state, at a rate equal to or greater than the rate of tax provided for in this part; or

(2) Upon which another state has previously legally imposed and collected a tax substantially similar to the tax imposed by this part, at a rate equal to or greater than the rate of tax provided for in this part.

(b) If the taxes described in subsection (a) are at a rate less than the rate imposed by this part, the tax imposed by this part shall be at the difference between the rate of tax imposed by this part and the rate of the tax described in subsection (a).

(c) Notwithstanding subsections (a) and (b), the tax levied by this part shall apply without reduction for any sales or use tax or tax substantially similar to the tax levied by this part that is paid to another state on the same transaction if such state does not have the first right to tax or has no statutory provisions to reduce its sales or use tax, or tax substantially similar to the tax levied by this part, by any payment of the tax levied by this part. Each taxpayer seeking a reduction of the tax levied by this part due to payment of a sales or use tax or tax substantially similar to the tax levied by this part to another state on the same transaction shall furnish evidence to the satisfaction of the commissioner that the

tax statutes of the other state would allow a reduction of its sales or use taxes or tax substantially similar to the tax levied by this part in like factual situations.

(d) The taxpayer shall bear the burden of maintaining documentary proof that the taxes described in subsection (a) have been paid.

SECTION 133. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following as new, appropriately designated subdivisions:

( ) "Bundled transaction" means the retail sale of two or more products, except real property and services to real property where: (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(A) "Distinct and identifiable products" does not include:

(1) Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials – such as wrapping, labels, tags, and instruction guides – that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes.

(2) A product provided free of charge with the required purchase of another product. A product is "provided free of charge" if the sales price of the product purchased does not vary depending on the inclusion of the product "provided free of charge".

(3) Items included in the definition of "sales price", pursuant to § 67-6-102.

(B) The term "one non-itemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(C) A transaction that otherwise meets the definition of a bundled transaction as defined above, is not a bundled transaction if it is:

(1) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or



(2) The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(3) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis.

(i) De minimis means the seller's purchase price or sales price of the taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products.

(ii) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.

(iii) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(4) The retail sale of exempt tangible personal property and taxable tangible personal property where: (1) the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies, and (2) where the seller's purchase price or sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction.

( ) "Commercial air carrier" means an entity authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce;

SECTION 134. Tennessee Code Annotated, Section 67-6-102, is amended by deleting the following language:

"Resale" shall mean a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" shall mean the sale of such property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale must, however, be in strict compliance with rules and regulations promulgated by the commissioner;

and by substituting instead the following language:

"Resale" shall mean a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" shall mean the sale of such property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale must, however, be in strict compliance with rules and regulations promulgated by the commissioner. Sales of tangible personal property or taxable services made by a dealer to an out-of-state vendor who directs that the dealer act as his (the out-of-state vendor's) agent to deliver or ship tangible personal property or taxable services to his (the out-of-state vendor's) customer, who is a user or consumer, are sales for resale;

SECTION 135. Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (f) in its entirety.

SECTION 136. Tennessee Code Annotated, Section 67-6-103, is amended by adding the following as a new, appropriately designated subsection:

( ) The state sales tax received under the provisions of this chapter from interstate telecommunications sold to businesses shall be distributed as follows: The revenue from a rate equal to four percent (4%) of tax shall be deposited in the telecommunications ad valorem tax reduction fund created by § 67-6-222 and shall be determined based on data or information the commissioner deems relevant. All other revenue shall be deposited in the state general fund and allocated pursuant to subsections (a) and (c).

SECTION 137. Tennessee Code Annotated, Section 67-6-201 is amended by deleting subsection (9) and (10) in their entirety.

SECTION 138. Tennessee Code Annotated, Section 67-6-201, is amended by adding the following as new, appropriately designated subdivisions:

( ) Charges a fee for subscription to, access to or use of television services provided by any electronic means, except for video programming services or direct-to-home satellite television services sold by persons subject to the tax in Chapter 4, Part 24 of this title;

( ) Whether or not the person has a place of business in this state, delivers tangible personal property in this state, if the delivery is made to a consumer in this state or to another person, for redelivery to a consumer in this state pursuant to a retail sale made by such person to such consumer; provided, that this shall not be construed to impose a tax that is invalid either under the commerce clause or the due process clause of the Constitution of the United States;

SECTION 139. Tennessee Code Annotated, Section 67-6-202(a), is amended by deleting the language "§ 67-6-702(d)" and substituting instead the language "§ 67-6-702".

SECTION 140. Tennessee Code Annotated, Section 67-6-203, is amended by deleting subsection (b) in its entirety.

SECTION 141. Tennessee Code Annotated, Section 67-6-205(c), is amended by adding the following as a new, appropriately designated subdivision:

( ) Charging a fee for subscription to, access to, or use of television services provided by any electronic means, except for video programming services or direct-to-home satellite television services sold by persons subject to the tax in Chapter 4, Part 24, of this title;

SECTION 142. Tennessee Code Annotated, Section 67-6-206, is amended by deleting the language "Tax at the rate of one percent (1%) is" and the language "Tax at the rate of one and one-half percent (1.5%) shall be" each place that they appear in the section and by substituting instead the language "No tax is" in each place and is further amended by deleting subdivisions (2) through (8) and substituting instead the following subdivisions:

(2) For the purpose of this subsection (b), "manufacturer" means one whose principal business is fabricating or processing tangible personal property for resale and also includes a person engaged at a location in packaging automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(A) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(B) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.

"Packaging", as used in this subdivision (b)(2), refers only to the fabrication and/or installation of that packaging which will accompany the automotive aftermarket product when sold at retail. The exemption shall apply only to such substances used in the packaging process. Such use must be established to the satisfaction of the commissioner by separate metering or otherwise.

(3) To qualify for the exemption under this section, a person shall apply for and receive a certificate of qualification for the exemption from the commissioner for each location that such person qualifies as a manufacturer or qualified data center. Such person shall furnish to vendors and suppliers of such purchases either a copy of the certificate issued by the commissioner or a Streamlined Sales Tax Certificate of Exemption, which must include the manufacturer's exemption authorization number included on the certificate issued by the commissioner, to evidence qualification for the exemption.

(4) Notwithstanding subdivision (b)(2), the term "manufacturer" shall not include any person whose principal business is the preparation of food for immediate retail sale.

SECTION 143. Tennessee Code Annotated, Section 67-6-209(b), is amended by deleting the following sentence:

The exemption provided for herein for private nonprofit colleges or universities shall apply only to the state portion of the sales tax.

SECTION 144. Tennessee Code Annotated, Section 67-6-217, is repealed in its entirety.

SECTION 145. Tennessee Code Annotated, Section 67-6-219, is repealed in its entirety.

SECTION 146. Tennessee Code Annotated, Section 67-6-221, is repealed in its entirety.

SECTION 147. Tennessee Code Annotated, Section 67-6-226, is repealed in its entirety.

SECTION 148. Tennessee Code Annotated, Section 67-6-227, is repealed in its entirety.

SECTION 149. Tennessee Code Annotated, Section 67-6-313(a), is amended by deleting the current language in its entirety and by substituting instead the following:

(a) It is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state for export, or produced or manufactured in this state for export. If the sale of tangible personal property imported into this state is sourced to this state, this exemption shall apply, provided that the purchaser's use of the tangible personal property imported into this state is limited to storage, inspection, or repackaging for shipment of the property for export outside this state.

SECTION 150. Tennessee Code Annotated, Section 67-6-322, is amended by deleting subsection (g) in its entirety and substituting instead the following:

(g) The sale, purchase, use, consumption or distribution of energy in the form of steam or chilled water produced and distributed by an energy resource recovery facility operated in a county with a metropolitan form of government is exempt from sales or use tax.

SECTION 151. Tennessee Code Annotated, Section 67-6-329, is amended by adding the following appropriately designated subdivisions:

( ) Dyed diesel fuel purchased for off-road use as provided in Chapter 3 of this title; and

( ) Charges for subscription to, access to, or use of video programming services or direct-to-home satellite television services subject to the tax levied under Chapter 4, Part 24, of this title;

SECTION 152. Tennessee Code Annotated, Section 67-6-330, is amended by deleting subdivision (a)(3) in its entirety.

SECTION 153. Tennessee Code Annotated, Section 67-6-349, is repealed in its entirety.

SECTION 154. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

67-6-385. (a) Notwithstanding other provisions of this chapter, except as provided in this section, no tax is imposed with respect to sales of tangible personal property to common carriers for use outside this state.

(b) Persons seeking to make such purchases exempt from tax shall apply to the commissioner for a certificate as provided in § 67-6-528 to obtain the exemption. The common carrier must give a copy of the certificate or a fully completed Streamlined Sales Tax Certificate of Exemption to each dealer from which it intends to make purchases exempt from tax.

(c) If a common carrier fails to keep records as required by the commissioner to establish that property purchased exempt from tax was not used in this state but was removed from this state for use and consumption outside this state, then the common carrier shall be liable for tax on such property at the full rate provided by § 67-6-203 regardless of whether such carrier had previously obtained a certificate as provided by this section; provided, that the carrier shall be given credit for any tax paid on such property pursuant to Chapter 4, Part 23 of this title.

(d) This section does not apply to sales of food and food ingredients, candy, dietary supplements, prepared food, alcoholic beverages, tobacco and fuel.

SECTION 155. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

67-6-386. (a) Notwithstanding other provisions of this chapter, no tax is imposed with respect to the sale or use of aviation fuel that is actually used in the operation of airplane or aircraft motors.

(b) Notwithstanding other provisions of this chapter, no tax is imposed with respect to the sale or use of diesel fuel sold to or used by a common carrier that is actually used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce.

(c) Common carriers seeking to make purchases of diesel fuel to be used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce exempt from tax shall apply to the commissioner for a certificate as provided in § 67-6-528 to obtain the exemption. The carrier must give a copy of the certificate or a fully completed Streamlined Sales Tax Certificate of Exemption to each dealer from which it intends to make purchases of aviation fuel or qualified diesel fuel exempt from tax.

(d) If the common carrier fails to keep records as required by the commissioner to establish that diesel fuel purchased exempt from tax was

actually used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce, then the common carrier shall be liable for tax on such property at the full rate provided by § 67-6-203 regardless of whether such carrier had previously obtained a certificate as provided by this section; provided that the carrier shall be given credit for any tax paid on such property pursuant to Chapter 4, Part 23 of this title.

SECTION 156. Tennessee Code Annotated, Section 67-6-407, is amended by deleting the present language in its entirety and substituting instead the following:

(a) The commissioner has the authority to require any person who pays the tax imposed by this chapter or by Chapter 4, Part 23 or 24, of this title, if such tax is to be allocated to the transportation equity fund pursuant to § 67-6-103, to file a quarterly report not later than thirty (30) days after the last day of the preceding calendar quarter. The report shall be executed under penalty of perjury, stating the total amount in gallons of fuel subject to the tax, the dollar amount of tax paid on such sales or uses, and any other information as may be required by the commissioner on forms prescribed by the department. The report required in this subsection (a) shall be supplemental to any other required by the commissioner or the department. A failure to file the report shall result in a civil penalty to be determined by the commissioner pursuant to the authority contained in § 67-6-402.

(b) The commissioner may furnish the reports authorized by this section, or the tax information contained in the reports, to the Department of Transportation solely for the purpose of administering the transportation equity fund. Any information released to the department pursuant to this subsection (b) shall be subject to the provisions of Chapter 1, Part 17 of this title, including the criminal penalties contained therein.

SECTION 157. Tennessee Code Annotated, Section 67-6-408, is amended by inserting the language "and § 67-4-2701" between the word "chapter" and the word "from" in subdivision (1), and by inserting the language "and § 67-4- 2306" between the word "chapter" and the word "from" in subdivision (2).

SECTION 158. Tennessee Code Annotated, Section 67-6-504, is amended by adding the following language after the phrase "during the preceding calendar month" at the end of subsection (a):

"; provided that each dealer shall be required to file only one return per month for all of its locations within the state".

SECTION 159. Tennessee Code Annotated, Section 67-6-504, is amended by deleting subsection (e) in its entirety.

SECTION 160. Tennessee Code Annotated, Section 67-6-528, is amended by deleting the language of the section in its entirety and substituting instead the following:

(a) Common carriers and commercial air carriers seeking to make purchases exempt from tax pursuant to § 67-6-385 or § 67-6-386 shall apply to the commissioner for a certificate. This application shall be made upon forms

provided by the commissioner and shall require information deemed necessary by the commissioner to establish that the applicant is a common carrier making purchases of tangible personal property for use outside this state or is a commercial air carrier that actually uses aviation fuel in the operation of airplanes or aircraft motors or is a common carrier that actually uses diesel fuel in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce. The certificate may be revoked by the commissioner at any time if the commissioner finds that the holder no longer meets the conditions precedent for the exemption.

(b) Common carriers making purchases exempt from tax pursuant to § 67-6-385 shall keep records of all such purchases establishing to the satisfaction of the commissioner that items purchased were not used in Tennessee but were removed from this state for use and consumption outside this state.

(c) Commercial air carriers making purchases exempt from tax pursuant to § 67-6-386 shall keep records of all such purchases establishing to the satisfaction of the commissioner that the fuel was actually used in the operation of airplanes or aircraft motors.

(d) Common carriers making purchases of diesel fuel exempt from tax pursuant to § 67-6-386 shall keep records of all such purchases establishing to the satisfaction of the commissioner that the fuel was actually used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce.

SECTION 161. Tennessee Code Annotated, Section 67-6-536, is amended by deleting subsection (a) and substituting instead the following:

(a) Model 1 or 2 sellers may submit their returns in such format as required by the member states to the Streamlined Sales and Use Tax Agreement; provided, however, that all such returns shall be filed electronically.

SECTION 162. Tennessee Code Annotated, Section 67-6-539, is amended by deleting the current language in its entirety and substituting instead the following:

(a) For purposes of the tax imposed by this chapter, a bundled transaction is subject to tax at the rate levied on the sale of tangible personal property at retail by the provisions of § 67-6-202.

(b) Notwithstanding subsection (a) to the contrary, in the case of a bundled transaction that includes any of the following:

- (1) telecommunication services,
- (2) ancillary services,
- (3) Internet access services,
- (4) audio or video programming services, or

(5) direct-to-home satellite television programming services,

if the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products shall be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

(c) The provisions of this section shall apply unless otherwise provided by federal law.

SECTION 163. Tennessee Code Annotated, Section 67-6-601, is amended by adding the following new subsection:

(d) A person does not have a nexus with Tennessee for sales and use tax purposes by reason of the relationship between the person and a commercial printer or mailer having a presence in Tennessee.

SECTION 164. Tennessee Code Annotated, Section 67-6-702, is amended by deleting the language of the section in its entirety and substituting instead the following:

(a)(1) Any county by resolution of its county legislative body or any incorporated city or town by ordinance of its governing body is authorized to levy a tax on the same privileges subject to this chapter as the same may be amended, which are exercised within such county, city or town, to be levied and collected in the same manner and on all such privileges but not to exceed two and three-fourths percent (2 3/4%); provided, that the tax levied shall apply only to the first one thousand six hundred dollars (\$1,600) on the sale or use of any single article of personal property; and, provided, further that the tax levied on the sale, purchase, use, consumption of electricity, piped natural or artificial gases, or other heating fuels delivered by the seller shall be one-half percent (.5%).

(2) Any five dollar (\$5.00) or seven dollar and fifty cent (\$7.50) tax limit on the sale or use of any single article of personal property in effect at present may be removed, and, by resolution in the case of counties and by ordinance in the case of municipalities, the tax at the existing rate may, instead, be made to apply to the bases provided in subdivision (a)(1). The resolution or ordinance shall be passed at least twice at two (2) or more consecutive public meetings, not more than one (1) of which may be held on any single day. Notice of the meetings and of the fact that this matter is on the agenda of the meetings shall be published at least once in a newspaper of general circulation throughout the jurisdiction involved not less than seven (7) days before the first of the meetings. If the county or counties in which it is located does not increase the base of the county-wide local sales and use tax pursuant to this subdivision, any municipality may by ordinance apply any county tax rate in effect in the municipality to the bases authorized in subdivision (a)(1) for purposes of the sale or use of any single article of personal property within the municipality's corporate limits. The ordinance increasing the base of the



county-wide tax within the municipality shall be adopted as required in this subdivision (a)(2).

(3) Once any local sales tax limit has been removed and the tax rate applied to the base provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body. For any municipality or county which implements a local sales tax for the first time after May 17, 1983, or during the phase-in period provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body.

(4) For the purpose of this part, persons engaged in the business of selling water shall be considered to be exercising a taxable privilege at the place where the tangible personal property is delivered to the purchaser.

(b) A use tax paid by the lessee of tangible personal property from a lessor which is a tax exempt entity pursuant to an election made under § 67-6-204(c) shall be in lieu of any tax that might otherwise be imposed under this part, and no additional sales or use tax may be imposed under this part on rental payments with respect to which a use tax based on the purchase price of the tangible personal property has been paid by election.

(c) "Single article" means that which is regarded by common understanding as a separate unit exclusive of any accessories, extra parts, etc., and that which is capable of being sold as an independent unit or as a common unit of measure, a regular billing or other obligation; provided, however, and notwithstanding any other law to the contrary, that "single article" applies only to motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes and only such items shall be regarded as "single articles". Parts or accessories for motor vehicles that are installed at the factory and delivered with the unit as original equipment and/or parts or accessories for motor vehicles that are installed by the dealer and/or distributor prior to sale, at the time of the sale, or which are included as a part of the sales price of the vehicle shall be treated as a part of the unit. In addition, all necessary parts and equipment installed by a motor vehicle dealer which are essential to the functioning of the motor vehicle or are required to be installed on the motor vehicle prior to sale to the ultimate consumer pursuant to state or federal statutes relating to the lawful use of the motor vehicle shall be treated as a part of the unit. Boat motors, other parts or accessories for boats, freight, and labor, excluding trailers, shall be treated as part of the boat unit in the same manner as parts or accessories for motor vehicles are treated as part of the motor vehicle unit. Parts and accessories and any other additional or incidental items or services that are part of the sale of a manufactured home shall be treated as part of the manufactured home unit in the same manner as parts and accessories for motor vehicles are treated as part of the motor vehicle unit. Such independent units sold in sets, lots, suites, etc., at a single price shall not be considered a single article.

(d) Notwithstanding any other law to the contrary, sales of tangible personal property upon which a state sales and use tax is levied shall be subject to a local sales and use tax at the rate of two and one-quarter percent (2.25%) when obtained from any vending machine or device.

SECTION 165. Tennessee Code Annotated, Section 67-6-704, is repealed in its entirety.

SECTION 166. Tennessee Code Annotated, Section 67-6-706(a)(3), is amended by deleting all of the language after the semicolon therein and substituting instead the following:

provided, that no tax shall be collected under any such ordinance or resolution until the earliest effective date allowed under the provisions of this part.

SECTION 167. Tennessee Code Annotated, Section 67-6-710, is amended by deleting subsection (e) in its entirety.

SECTION 168. Tennessee Code Annotated, Section 67-6-710, is amended by deleting subsection (f) in its entirety.

SECTION 169. Tennessee Code Annotated, Section 67-6-712, is amended by adding the following new subsection:

(e)(1) When local sales tax revenues received by the department cannot be identified to a particular situs, the following distribution shall be made:

(A) Fifty percent (50%) shall be distributed to incorporated municipalities in the proportion that the population of each bears to the aggregate population of the state and to counties in the proportion the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census and other census authorized by law. Counties and incorporated municipalities shall use such funds in the same manner and for the same purposes as funds distributed pursuant to § 67-6-712; and

(B) Fifty percent (50%) shall be distributed to the counties based on the ratio of local tax collections in the county under this section over total tax collections in all counties under this section.

(2) The amount received by the county under subdivision (e)(1)(B) shall be distributed first as provided for in subdivision (a)(1). The remainder shall be distributed to the cities or towns in the county based on the ratio of total collections in the municipality to total collections in the county.

SECTION 170. Tennessee Code Annotated, Section 67-6-714, is repealed in its entirety.

SECTION 171. Tennessee Code Annotated, Title 67, Chapter 6, Part 7, is amended by adding the following new section:

67-6-715. (a) The commissioner shall refund the portion of the local tax imposed by this chapter that is attributable to the amendment of the single article provision of the Local Option Revenue Act, compiled in this part, for any taxpayers that pay business tax under Chapter 4, Part 7 of this title; franchise and excise tax under Chapter 4, Parts 20 and 21 of this title; or sales and use tax under this chapter.

(b) The refund provided for by this section shall be limited to the difference in tax paid by the person entitled to such refund and the tax that would have been paid on the first thirty-two hundred dollars (\$3,200) of the sale price of a single article as defined in § 67-6-702 on tangible personal property other than motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes prior to July 1, 2009. The refund shall only be allowed on tangible personal property purchased by the taxpayer for use in the business for which the taxpayer is registered under subsection (a).

(c) A person entitled to a refund pursuant to this section shall make a single yearly claim for refund to the commissioner, covering a period of twelve (12) consecutive calendar months, the period to be specified by the commissioner. The commissioner is authorized to make refunds pursuant to this section, provided a claim is filed with the commissioner, under oath and supported by proper proof, within six (6) months after the end of the twelve (12) month period covered by the claim. The provisions of § 67-1-1802 do not apply to refunds made pursuant to this section.

(d) In lieu of filing a claim for refund a dealer registered for sales and use tax may take a credit on its sales and use tax return for the tax that would be refundable under subsection (b). Any dealer that takes this credit on its sales and use tax return must file on an annual basis an information report with the commissioner. This information report shall be in a format approved by the commissioner and shall contain sufficient information for the commissioner's delegates to verify the validity of a credit taken under this section. This information report shall include:

(1) Information showing that the item would have qualified as a single article under § 67-6-702 prior to July 1, 2009;

(2) The amount of the Tennessee sales tax remitted on the single article;

(3) The local jurisdiction to which the tax was paid;

(4) If applicable, information regarding the vendor to whom the tax was paid; and

(5) Such other information as necessary to determine the validity of the credit taken.

This information report shall be filed within sixty (60) days of the close of each calendar year in which a credit was taken on any sales and use tax return.

SECTION 172. Tennessee Code Annotated, Title 67, Chapter 6, Part 7, is amended by adding the following new section:

67-6-716. Notwithstanding any other provision in this part:

(1) A local tax imposed under this part or change in a local tax rate shall become effective only on the first day of a calendar quarter and no sooner than sixty-one (61) days after the commissioner has issued general notification of the new tax or change in the rate to dealers affected; provided, however, that the failure of a dealer to receive notice does not relieve it of the obligation to collect, remit or pay the tax imposed under this part; and further provided, that the failure of a purchaser to receive notice does not relieve the purchaser of any use tax obligation.

(2) Notwithstanding the provisions of subsection (1), with respect to purchases from printed catalogs where the purchaser computes the tax based on local rates published in the catalog, a local tax imposed under this part or change in a local tax rate shall become effective only on the first day of a calendar quarter and no sooner than one hundred twenty-one (121) days after the commissioner has issued general notification of the new tax or change in the rate to dealers affected; provided, however, that the failure of a dealer to receive notice does not relieve it of the obligation to collect, remit or pay the tax imposed under this part; and further provided, that the failure of a purchaser to receive notice does not relieve the purchaser of any use tax obligation.

(3) For sales and use tax purposes only, local jurisdiction boundary changes shall become effective only on the first day of a calendar quarter and no sooner than sixty-one (61) days after the commissioner has issued general notification of the new tax or change in the rate to dealers affected; provided, however, that the failure of a dealer to receive notice does not relieve it of the obligation to collect, remit or pay the tax imposed under this part; and further provided, that the failure of a purchaser to receive notice does not relieve the purchaser of any use tax obligation.

SECTION 173. Tennessee Code Annotated, Title 67, Chapter 6, Part 9, is amended by adding the following new section:

67-6-901. (a) Notwithstanding any other law to the contrary, this part shall apply in determining whether a transaction is subject to the tax levied under the provisions of this chapter, and if so in determining the applicable local tax levied under the provisions of Part 7 of this chapter. The provisions of this part apply regardless of the characterization of a product as tangible personal property, a digital product, or a service, and apply only to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

(b) Nothing in this part is intended to impose tax on a transaction if a state tax on the transaction is prohibited by the United States Constitution or the constitution of this state.

(c) The general provisions of §§ 67-6-902 -- 67-6-905 do not apply to sales or use taxes levied on the following, except as specifically provided for in this subsection (c); instead the special provisions of § 67-6-906 shall apply to:

(1) The retail sale or transfer of watercraft, manufactured homes, or mobile homes;

(2) The retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in § 67-6-902(d). The retail sale of these items shall be sourced according to existing law as of the effective date of this part, and the lease or rental of these items shall be sourced according to § 67-6-902(d); and

(3) Telecommunications services and ancillary services, as set out in § 67-6-905, shall be sourced in accordance with that section.

SECTION 174. Tennessee Code Annotated, Title 67, Chapter 6, Part 9, is amended by adding the following new section:

67-6-902. (a) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller;

(3) When subdivisions (a)(1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(4) When subdivisions (a)(1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

(5) When none of the previous rules of subdivisions (a)(1), (2), (3), or (4) apply, including the circumstance in which the seller is without

sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital product or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(b) The lease or rental of tangible personal property, other than property identified in subsection (c) or subsection (d), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls;

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a); and

(3) This subsection (b) does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(c) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (d), and watercraft with a displacement of under fifty (50) tons, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations;

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a); and

(3) This subsection (c) does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(d) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (a), notwithstanding the exclusion of lease or rental in subsection (a). For purpose of this part, "transportation equipment" means any of the following:

(1) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(2) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of ten thousand one pounds (10,001 lbs) or greater, trailers, semi-trailers, or passenger buses that are:

(A) Registered through the International Registration Plan;  
and

(B) Operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(3) Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (d)(1)-(3).

(e) For the purposes of subsection (a), the terms "receive" and "receipt" mean:

(1) Taking possession of tangible personal property;

(2) Making first use of services; or

(3) Taking possession or making first use of digital products,  
whichever comes first.

The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

SECTION 175. Tennessee Code Annotated, Title 67, Chapter 6, Part 9, is amended by adding the following new section:

67-6-904. (a) Notwithstanding § 67-6-902, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a Streamlined Sales Tax Certificate of Exemption form claiming direct mail or information to show the jurisdictions to which the direct mail is delivered to recipients.

(1) Upon receipt of the certificate of exemption, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A certificate of exemption claiming direct mail shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(2) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a certificate of exemption claiming direct mail or delivery information, as required by subsection (a), the seller shall collect the tax according to § 67-6-902(a)(5). Nothing in this subsection (b) shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a Streamlined Sales Tax Certificate of Exemption claiming direct mail or delivery information to the seller.

SECTION 176. Tennessee Code Annotated, Section 67-6-905, is amended by deleting the language of the section in its entirety and substituting instead the following:

(a) Except for the defined telecommunication services in subsection (c), the sale of telecommunication service sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call:

(1) Originates and terminates in that jurisdiction; or

(2) Either originates or terminates and in which the service address is also located.

(b) Except for the defined telecommunication services in subsection (c), a sale of ancillary services or telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(c) The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act, codified at 4 U.S.C. §§ 116-126;



(2) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

(A) The seller's telecommunications system; or

(B) Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

(3) A sale of a prepaid calling service, or a sale of a prepaid wireless calling service, is sourced in accordance with § 67-6-902; provided, however, that, in the case of a sale of prepaid wireless calling service, the rule provided in § 67-6-902(a)(5) shall include as an option the location associated with the mobile telephone number; and

(4) A sale of a private communication service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located;

(B) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located;

(C) Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located; and

(D) Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

(d) For the purpose of this section, the following definitions apply:

(1) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(2) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls;

(3) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(4) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this provision only applies for the purpose of sourcing sales of telecommunications services under this section. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(5) "Customer channel termination point" means the location where the customer either inputs or receives the communications;

(6) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity;

(7) "Home service provider" means the same as that term is defined in 4 U.S.C. § 124(5) of Public Law 106-252 (Mobile Telecommunication Sourcing Act);

(8) "Mobile telecommunications service" means the same as that term is defined in 4 U.S.C. § 124(7);

(9) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider;

(10) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis, either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service;

(11) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed,

and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(12) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service, as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance, that is sold in predetermined units or dollars, of which the number declines with use in a known amount;

(13) "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels; and

(14) "Service address" means:

(A) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(B) If the location in subdivision (d)(14)(A) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and

(C) If the locations in subdivisions (d)(14)(A) and (B) are not known, the service address means the location of the customer's place of primary use.

SECTION 177. Tennessee Code Annotated, Title 67, Chapter 6, Part 9, is amended by adding the following new section:

67-6-906. (a) The retail sale, excluding the lease or rental, of watercraft with a displacement of less than fifty (50) tons and the sale or transfer, including lease or rental, of manufactured homes, or mobile homes; and the retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in § 67-6-902(d); shall be sourced as follows:

(1) If a dealer regularly engaged in making sales or transfers of the property being sold, the transaction is sourced to the business location of the dealer making the sale and the dealer shall collect the applicable state and local sales tax;

(2) If the sale or transfer of property is made by a dealer or person not regularly engaged in making sales or transfers of the property being sold, and such property is required by law to be registered, or titled, or both, by the county clerk or the agency with which the property is licensed, registered or otherwise recorded requires sales tax to be paid to the county clerk as a prerequisite, the clerk shall collect the applicable state and local sales or use tax at the rate applicable in the clerk's county jurisdiction;

(3) In all other situations where Tennessee sales or use tax is due but has not been paid by the purchaser, the purchaser shall file a use tax return with the commissioner and pay the applicable state and local tax. In such a case, the purchaser shall pay the local use tax at the rate applicable in the county or municipality where the place of primary use of the property takes place; and

(4) For purposes of subdivision (a)(3), the place of primary use of the property shall be the owner's Tennessee street address. If the owner has more than one (1) Tennessee address, the place of primary use of the property shall be the primary street address at which the owner keeps the property. The property's place of primary use shall not be altered by intermittent use at different locations, such as the use of business property that accompanies employees on business trips and service calls.

(b) Notwithstanding any other law to the contrary, the retail sale, including the lease or rental, of watercraft with a displacement of fifty (50) tons or more shall be sourced under the provisions of § 67-6-902(d).

SECTION 178. Tennessee Code Annotated, Title 67, Chapter 6, Part 9, is amended by adding the following new section:

67-6-907. (a) For purposes of this section, a "retail florist" is a seller who is primarily engaged in the retail sale of cut flowers and floral arrangements that are primarily either sold over-the-counter or delivered locally by the same florist. For this purpose, the term "primarily" means more than fifty percent (50%) of the seller's total gross sales or receipts are derived from that activity. In determining if a business is primarily a florist, the total sales price of cut flowers and floral arrangements includes all charges made by the florist to the purchaser of such as separately stated delivery or service charges. All service, relay and any other charges for orders, including charges for long distance telephone calls and telegraph service that are separately stated and represent cost to the retail florist, without any mark-up, shall be considered to be part of the total selling price subject to the sales tax.

(b) Notwithstanding any other law to the contrary, the sale of cut flowers, floral arrangements, potted plants and any associated tangible personal property by a retail florist shall be sourced as follows:

(1) If the transaction takes place prior to July 1, 2009;

(A) The sale shall be sourced to the location of the florist that took the order from the purchaser even if such florist forwards the order to another retail florist in a different taxing jurisdiction to prepare and deliver to the recipient identified by the purchaser;

(B) The retail florist that took the order shall collect from the purchaser the applicable state sales tax and the local sales tax applicable in such retail florist's taxing jurisdiction and remit such tax to the appropriate taxing authority; and

(C) If a Tennessee retail florist receives instructions from another retail florist for the delivery of flowers, such receiving florist will not be held liable for tax with respect to any receipts that such florist may realize from the transaction.

(2) If the transaction takes place on or after July 1, 2009, and the retail florist taking the order forwards it to another retail florist in a different taxing jurisdiction to prepare and deliver to the recipient identified by the purchaser, the sale is sourced to the location in the taxing jurisdiction where delivery to the recipient, the purchaser's donee, occurs; and

(A) The retail florist that took the order shall collect from the purchaser the applicable state sales tax and the local sales tax applicable in the taxing jurisdiction where delivery to the recipient, the purchaser's donee, occurs and remit such tax to the appropriate taxing authority; and

(B) If a Tennessee retail florist receives instructions from another retail florist for the delivery of flowers, such receiving florist will not be held liable for sales or use tax with respect to any receipts that such florist may realize from the transaction.

SECTION 179. Tennessee Code Annotated, Section 67-4-2604, is amended by adding the following as a new, appropriately designated subsection:

(e) To promote compliance with this chapter, the commissioner may promulgate regulations requiring a tobacco product manufacturer subject to the requirements of § 67-4-2602(a)(2), to make the escrow deposits required in quarterly installments during the year in which the sales covered by the deposits are made. The commissioner may require production of information sufficient to determine the adequacy of the amount of the installment deposit.

SECTION 180. Tennessee Code Annotated, Section 67-4-2109(c)(1), is amended by deleting subdivision (B) in its entirety and by substituting instead the following:

(B) "Economically distressed county" means a county that meets one (1) of the following criteria for any month during the twenty-four (24) months immediately prior to the creation of any net new full-time employee job for which a job tax credit is sought pursuant to this subsection (c), based on monthly statistics from the Department of Labor and Workforce Development:

(i) The average number of dislocated workers in the county exceeds the average number of dislocated workers in Tennessee; or

(ii) The per capita income of the county is less than Tennessee's average per capita income.

Notwithstanding a determination as economically distressed as set out above, based on an annual evaluation as of July 1 of each year, the Commissioner of Economic and Community Development may determine that a county is economically distressed, if such county experiences substantial characteristics of economic distress, including, but not limited to, major loss of employment, recent high unemployment rates, traditionally low levels of family incomes, high levels of poverty and high concentrations of employment in declining industries. Upon determining that a county is economically distressed, the Department of Economic and Community Development shall designate the county as a tier one (1), tier two (2), or tier three (3) economically distressed county based on unemployment, per capita income, and poverty levels of all Tennessee counties using statistical data prepared by any agency of the state or federal government no later than July 1 of each year. A list of all tier one (1), tier two (2), and tier three (3) economically distressed counties shall be published annually by the Department of Economic and Community Development.

SECTION 181. Tennessee Code Annotated, Section 67-4-2109(c)(2)(B), is amended by deleting the language "located in an economically distressed county" and by substituting instead the language "located in a tier one (1) economically distressed county".

SECTION 182. Tennessee Code Annotated, Section 67-4-2109(c)(2), is amended by adding the following as a new, appropriately designated subdivision:

( ) If the qualified business enterprise is located in a tier two (2) or tier three (3) economically distressed county, then the credit allowed in subdivision (c)(2)(A) shall be four thousand five hundred dollars (\$4,500) for each net new full-time employee job. In addition to the job tax credit otherwise allowed in this subsection (c), the following additional tax credit shall be allowed on an annual basis to offset the taxpayer's franchise and excise tax liability. If the qualified business enterprise is located in a tier two (2) economically distressed county, such annual credit shall be allowed for a period of three (3) years beginning with the first tax year after the initial job tax credit is created. If the qualified business enterprise is located in a tier three (3) economically distressed county, such annual credit shall be allowed for a period of five (5) years beginning with the first tax year after the initial job tax credit is created. The additional annual credit shall equal four thousand five hundred dollars (\$4,500) for each net new full-time employee job, provided that the jobs remain filled by employees during the year in which the credit is being taken. This annual credit may be used to offset up to one hundred percent (100%) of the taxpayer's franchise and excise tax liability for that year. Any unused annual credit, however, shall not be carried forward beyond the year in which the credit originated, notwithstanding subdivision (c)(2)(F) to the contrary.

SECTION 183. Tennessee Code Annotated, Section 67-4-409, is amended by deleting the language in subsection (g) in its entirety and by substituting instead the following:

(g) Three and one-fourth cents (3.25¢) of the tax levied by subsection (a) shall, subject to the annual appropriations act, be credited to a special agency account in the state general fund known as the "1986 Wetland Acquisition Fund." If such an appropriation is not made in the appropriations act, then such amount shall be credited to the general fund. Such funds shall not be obligated or expended to acquire any interest in real property through condemnation or the power of eminent domain. Expenditures from such fund shall only be made to implement and effectuate the purposes of Title 11, Chapter 14, Part 4. The fund may be expended to maintain property purchased pursuant to such part. Funds deposited in such fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

SECTION 184. Tennessee Code Annotated, Section 67-4-409(i), is amended by deleting the language in subdivision (1) in its entirety and by substituting instead the following:

(1) One and three-fourths cents (1.75¢) of the tax levied by subsection (a) shall, subject to the General Appropriations Act, be credited to a special agency account in the state general fund known as the "Local Parks Land Acquisition Fund." If an appropriation is not made in the appropriations act, then the amount shall be credited to the general fund. The moneys in this fund shall be used only for grants to county and municipal governments to implement and carry out the purposes set forth in this subsection (i); provided, that the Commissioner of Environment and Conservation may allocate not more than three and one-half percent (3.5%) of the moneys in this fund for the administration of the fund. Funds deposited in the fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

SECTION 185. Tennessee Code Annotated, Section 67-4-409(j), is amended by deleting the language in subdivision (1) in its entirety and by substituting instead the following:

(1) One and one-half cents (1.5¢) of the tax levied by subsection (a) shall, subject to the annual appropriations act, be credited to a special agency account in the state general fund known as the "State Land Acquisition Fund". If such an appropriation is not made in the appropriations act, then such amount shall be credited to the general fund. Expenditures from such fund shall be made only to implement and carry out the purposes set forth in this subsection (j). Funds deposited in the fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

SECTION 186. Tennessee Code Annotated, Section 67-4-409(l), is amended by deleting the language in subdivision (1) in its entirety and by substituting instead the following:

(1) One and one-half cents (1.5¢) of the tax levied by subsection (a) shall, subject to the annual appropriations act, be credited to a special agency account in the state general fund known as the "Agricultural Resource Conservation Fund". If such an appropriation is not made in the appropriations act, then such amount shall be credited to the general fund. Expenditures from such fund shall be made only to implement and carry out the purposes set forth in this subsection (1). Funds deposited in the fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

SECTION 187. Sections 13 and 14 of this act shall take effect upon becoming a law and apply to tax years ending on or after July 1, 2007, the public welfare requiring it. Sections 15 and 16 of this act shall take effect on October 1, 2007, and shall apply to all transactions occurring on or after that date, the public welfare requiring it. Sections 23 through 27 of this act shall take effect on October 1, 2007, the public welfare requiring it. Section 40 of this act shall apply to all sales and use taxes assessed on or after January 1, 2004, the public welfare requiring it. Sections 54 through 126 of this act shall take effect on January 1, 2008, the public welfare requiring it. Sections 127 through 178 of this act shall take effect on July 1, 2009, the public welfare requiring it. Sections 183 through 186 of this act shall take effect on June 30, 2007, and shall be repealed on June 30, 2008, at which time the provisions of Tennessee Code Annotated, Section 67-4-409, Subsection (g) and Subdivisions (i)(1), (j)(1), and (l)(1), that existed immediately prior to enactment of Public Acts of 2003, Chapter 355, Sections 33 through 36, shall be revived and shall be in effect as they existed immediately prior to August 1, 2003, the public welfare requiring it. All remaining sections of this act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: June 11, 2007**



RON RAMSEY  
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 28th day of June 2007**





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PHIL BREDESEN, GOVERNOR